MT Ventures Sdn Bhd & Anor v QM Print Sdn Bhd and another appeal

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NOS 02(i)-6–03 OF 2024(W) AND 02(i)-17–06 OF 2024(W)
NALLINI PATHMANATHAN, RHODZARIAH BUJANG AND HANIPAH FARIKULLAH FCJJ
9 SEPTEMBER 2025

Civil Procedure — Striking out — Appeal against dismissal of striking out application — Right to appeal against dismissal of striking out application — The essential basis of appellants' striking out applications were points of law regarding locus standi and res judicata — Whether appellants had right to appeal against dismissals of their respective interlocutory applications to strike out pleadings in view of recent amendments to s 68 of the Courts of Judicature Act 1964 — Courts of Judicature Act 1964 ss 3, 67 & 68(1)(f) — Rules of Court 2012 O 18 r 19

Statutory Interpretation — Construction of statutes — Harmonious construction — Purposive approach or literal and grammarian approach — Right to appeal against dismissal of striking out application — Holistic and harmonious construction of s 68(1)(f) with ss 3 and 67 of Courts of Judicature Act 1964 — Courts of Judicature Act 1964 ss 3, 67 & 68(1)(f) — Interpretation Acts 1948 and 1967 s 17A

There were two separate cases before the High Court which involved striking out application pursuant to O 18 r 19 of the Rules of Court 2012. In the first case, the essential basis of the appellants' striking out application was a challenge to the locus standi of the respondent. As for the second case, the essential basis of the appellant's striking out application centred around the issue of whether the respondents' claim was barred by res judicata. The striking out applications in both suits were dismissed by the High Court. The subsequent appeals by the appellants were also dismissed by the Court of Appeal on the basis of s 68(1)(f) of the Courts of Judicature Act 1964 ('the CJA'). It ought to be noted that in both appeals, there was no consideration of the substantive merits of the striking out applications. Aggrieved, the appellants filed the present appeals. The primary issue in the present appeals before the Federal Court was whether the appellants had a right to appeal the dismissals of their respective interlocutory applications to strike out pleadings in view of the recent amendments to s 68 of the CJA, more particularly s 68(1)(f) of the CJA via s 8 of the Courts of Judicature (Amendment) Act 2022.

Held, ordering that both appeals be reinstated and heard in full before the Court of Appeal: A

(1) The court was of the view that there were many preliminary points of law that fell to be considered and which may well finally determine parties' rights in a striking out application. Was it the intent of the Legislature to preclude such matters from being determined conclusively at the outset and to put the parties through the trial procedure? This would defeat the purpose of any attempt to expedite the clearing of cases through the courts. For this reason, the court was of the view that the construction to be accorded to s 68(1)(f) of the CJA was not as straightforward as adopting a literal and grammarian approach. The construction of the subsection required a consideration of the relevant provisions of the CJA so as to achieve a correct and harmonious reading of the same (see para 9). B C

(2) Having regard to the purpose of legislation was a key element of interpreting statutes; purpose was not merely a secondary tool to be had regard to when statutes were ambiguous. In Malaysia especially, having regard to the statutory mandate outlined by s 17A of the Interpretation Acts 1948 and 1967; statutory construction was not a matter left to the interpretive choices of judges. The significance of s 17A as prescribing a purposive approach had been recognised by our apex court numerous times. The language of a statute could not be fully understood before one had regard to its purpose. The purpose of the statute was engaged immediately; ambiguity or anything else was not a precondition to the consideration of purpose (see paras 72–74 & 76). D E F

(3) Read purposively to reduce delays, and in light of the fact that the deferral of a decision did not dispose of any substantive rights, nor usually prejudice the parties in any material manner, ss 3 and 67 of the CJA should be read as not granting a right to appeal the deferral of a judgment or order which did not finally dispose of the rights of the parties. This followed from a purposive and contextual construction of the statute. Therefore, when s 68(1)(f) of the CJA was construed holistically and harmoniously with s 67 of the CJA and necessarily s 3 of the CJA, it would be found to be applicable to cases where the High Court determined that further oral evidence needed to be adduced in order that it could arrive at a decision which finally disposed of the parties' rights. In such instances there was no right of appeal because the parties' rights had not been finally disposed of or fully adjudicated upon (see paras 10 & 139). G H

(4) While the dismissal of striking out applications was generally not appealable, the parties possessed a right to appeal on the particular facts of their respective cases. The substantive right of the appellants to appeal the dismissal of their striking out applications were indeed vested in them at the time they filed their respective suits. This substantive right was not I

taken away by s 68(1)(f) of the CJA; indeed, s 68(1)(f) of the CJA did not alter the position of law in relation to this substantive right (see paras 227–228).

(5) The correct position in law was that s 68(1)(f) of the CJA only barred appeals where there was no final disposal of the rights of parties. This was normally the case where the court of first instance determined that further oral evidence needed to be adduced in order that it could arrive at a decision which finally disposed of the parties' rights. This was the position in law even pre-s 68(1)(f) of the CJA on a proper appreciation of s 3 of the CJA. In other words, s 68(1)(f) of the CJA clarified the law but did not change it. The present appeals however did not turn on a need to hear further oral evidence but on preliminary points of law. As such the dismissal of the striking out applications resulted in a final disposal of the appellants' rights, as envisaged under ss 3 and 67 of the CJA. Therefore, s 68(1)(f) of the CJA did not preclude an appeal to the Court of Appeal from those first instance decisions (see para 229).

[Bahasa Malaysia summary

Terdapat dua kes berasingan di hadapan Mahkamah Tinggi yang melibatkan permohonan pembatalan menurut A 18 k 19 Kaedah-Kaedah Mahkamah 2012. Dalam kes pertama, asas penting bagi permohonan pembatalan oleh perayu adalah satu cabaran kepada locus standi responden. Bagi kes kedua, asas penting bagi permohonan pembatalan oleh perayu tertumpu kepada isu sama ada tuntutan responden telah dihalang oleh res judicata. Permohonan pembatalan dalam kedua-dua saman tersebut telah ditolak oleh Mahkamah Tinggi. Rayuan seterusnya oleh perayu-perayu juga telah ditolak oleh Mahkamah Rayuan berdasarkan s 68(1)(f) Akta Mahkamah Kehakiman 1964 ('AMK'). Perlu diingatkan bahawa dalam kedua-dua rayuan tersebut, tiada pertimbangan tentang merit substantif permohonan pembatalan tersebut. Terkilan, perayu-perayu memfailkan rayuan-rayuan semasa. Isu utama dalam rayuan-rayuan semasa di Mahkamah Persekutuan ialah sama ada perayu-perayu mempunyai hak untuk merayu terhadap penolakan permohonan interlokutori masing-masing untuk pembatalan pliding, mengambil kira pindaan baru-baru ini kepada s 68 AMK, khususnya s 68(1)(f) AMK melalui s 8 Akta Mahkamah Kehakiman (Pindaan) 2022.

Diputuskan, memerintahkan supaya kedua-dua rayuan dikembalikan semula dan didengar sepenuhnya di hadapan Mahkamah Rayuan:

(1) Mahkamah berpendapat bahawa terdapat banyak perkara-perkara awal undang-undang yang boleh dipertimbangkan dan mungkin akhirnya menentukan hak pihak-pihak dalam permohonan pembatalan. Adakah badan perundangan berhasrat untuk menghalang perkara sedemikian daripada ditentukan secara muktamad pada awalnya dan meletakkan pihak-pihak untuk melalui prosedur perbicaraan? Ini akan

menggagalkan tujuan apa-apa percubaan untuk mempercepatkan pelupusan kes melalui mahkamah. Atas sebab ini, mahkamah berpendapat bahawa tafsiran yang akan diberikan kepada s 68(1)(f) AMK adalah tidak semudah menggunakan pendekatan literal dan tatabahasa. Tafsiran subseksyen tersebut memerlukan pertimbangan peruntukan AMK yang berkaitan untuk mencapai bacaan yang betul dan harmoni (lihat perenggan 9).

(2) Mengambil kira tujuan perundangan merupakan elemen penting dalam mentafsir statut; tujuan bukan sekadar alat sekunder yang perlu diambil kira apabila statut tidak jelas. Di Malaysia terutamanya, dengan mengambil kira mandat statutori yang digariskan oleh s 17A Akta Tafsiran 1948 dan 1967; tafsiran berkanun bukanlah perkara yang diserahkan kepada pilihan tafsiran hakim. Kepentingan s 17A dalam menetapkan pendekatan bertujuan telah diiktiraf beberapa kali oleh mahkamah tertinggi di Negara ini. Bahasa sesuatu undang-undang tidak dapat difahami sepenuhnya sebelum seseorang mengambil kira tujuannya. Tujuan statut dipertimbangkan serta-merta; kekaburan atau perkara lain bukanlah prasyarat kepada pertimbangan tujuan (lihat perenggan 72–74 & 76).

(3) Apabila dibaca secara bertujuan untuk mengurangkan kelewatan, dan mengambil kira fakta bahawa penangguhan keputusan tidak melupuskan apa-apa hak substantif, atau kebiasaannya akan menjejaskan pihak-pihak dalam apa-apa cara yang material, ss 3 dan 67 AMK harus dibaca sebagai tidak memberikan hak untuk merayu penangguhan penghakiman atau perintah yang akhirnya tidak melupuskan hak pihak-pihak tersebut. Ini adalah berdasarkan tafsiran statut secara bertujuan dan kontekstual. Oleh itu, apabila s 68(1)(f) AMK ditafsirkan secara holistik dan harmoni dengan s 67 AMK dan semestinya s 3 AMK, ia akan didapati terpakai kepada kes-kes di mana Mahkamah Tinggi memutuskan bahawa keterangan lisan selanjutnya perlu dikemukakan supaya mahkamah boleh mencapai keputusan yang akhirnya akan melupuskan hak pihak-pihak. Dalam keadaan sedemikian, tiada hak untuk merayu kerana hak-hak pihak-pihak tidak akhirnya dilupuskan atau diadili sepenuhnya (lihat perenggan 10 & 139).

(4) Walaupun penolakan permohonan pembatalan secara amnya tidak boleh dirayu, pihak-pihak mempunyai hak untuk merayu mengenai fakta tertentu kes masing-masing. Hak substantif perayu-perayu untuk merayu penolakan permohonan pembatalan mereka sememangnya terletak pada mereka pada masa mereka memfailkan saman masing-masing. Hak substantif ini tidak diambil oleh s 68(1)(f) AMK; sesungguhnya, s 68(1)(f) AMK tidak mengubah kedudukan undang-undang berhubung dengan hak substantif ini (lihat perenggan 227–228).

(5) Kedudukan yang betul dalam undang-undang ialah s 68(1)(f) AMK hanya menghalang rayuan apabila tiada pelupusan muktamad hak pihak-pihak. Ini biasanya berlaku di mana mahkamah bicara memutuskan bahawa keterangan lisan selanjutnya perlu dikemukakan supaya ia boleh mencapai keputusan yang akhirnya melupuskan hak pihak-pihak. Ini adalah kedudukannya dalam undang-undang walaupun semasa pra-s 68(1)(f) AMK apabila penghargaan yang sewajarnya diberikan terhadap s 3 AMK. Dalam erti kata lain, s 68(1)(f) AMK memperjelaskan undang-undang tersebut tetapi tidak mengubahnya. Rayuan-rayuan semasa bagaimanapun tidak berkaitan dengan keperluan untuk mendengar keterangan lisan lanjut tetapi berhubung dengan perkara awal undang-undang. Oleh yang demikian, penolakan permohonan-permohonan pembatalan tersebut telah mengakibatkan pelupusan muktamad hak-hak perayu, seperti yang diperuntukkan di bawah ss 3 dan 67 AMK. Oleh itu, s 68(1)(f) AMK tidak menghalang rayuan kepada Mahkamah Rayuan daripada keputusan tingkat pertama tersebut (lihat perenggan 229).]

Cases referred to

Abdul Ravuff bin Datuk AS Dawood & Ors v Dr Abdul Rahiman bin Datuk AS Dawood (in his personal capacity and as administrator for the estate of Patama @ Ammaji Bibi bt Daud Sah) and other appeals [2022] 4 MLJ 379, FC (refd)

All Malayan Estates Staff Union v Rajasegaran & Ors [2006] 6 MLJ 97, FC (refd)

Ang Gin Lee v PP [1991] 1 MLJ 498, SC (refd)

Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd [1995] 3 MLJ 189, SC (refd)

Asia Pacific Higher Learning Sdn Bhd (registered owner and licensee of the higher learning institution Lincoln University College) v Majlis Perubatan Malaysia & Anor [2020] 2 MLJ 1, FC (refd)

Bozson v Altrincham Urban District Council [1903] 1 KB 547, CA (refd)

Bumiputra-Commerce Bank Bhd v Augusto Pompeo Romei & Anor [2014] 3 MLJ 672, CA (refd)

Bursa Malaysia Securities Bhd v Mohd Afrizan bin Husain [2022] 3 MLJ 450, FC (refd)

Canada (Minister of Citizenship and Immigration) v Vavilov 2019 SCC 65, SC (refd)

Carl-Zeiss-Stiftung v Rayner and Keeler Ltd and Others (No 2) [1966] 2 All ER 536, HL (refd)

Christopher ak Bandi @ Josny v Tumbung ak Nakis & Anor (Jamil bin Sindi, third party) [2016] 4 MLJ 100, CA (folld)

CIC Insurance Ltd v Bankstown Football Club Ltd (1997) 187 CLR 384, CA (refd)

Colonial Sugar Refining Co Ltd v Irving [1906] AC 360, PC (refd)

Dato' Seri Anwar bin Ibrahim v PP [2010] 2 MLJ 312, FC (refd)

Detik Ria Sdn Bhd v Prudential Corp Holdings Ltd & Anor [2025] 3 MLJ 22, FC (refd)
Eco-Sud and others v Minister of Environment, Solid Waste and Climate Change and another (Mauritius) [2024] UKPC 19, PC (refd)
Eu Finance Bhd v Lim Yoke Foo [1982] 2 MLJ 37; [1982] CLJU 21, FC (refd)
Jack-In Pile (M) Sdn Bhd v Bauer (M) Sdn Bhd and another appeal [2020] 1 MLJ 174, FC (refd)
Kempadang Bersatu Sdn Bhd v Perkayuan OKS No 2 Sdn Bhd [2019] 4 MLJ 614, FC (refd)
Kerajaan Malaysia v LFL Sdn Bhd and another appeal [2024] MLJU 3015, FC (refd)
L'Office Cherifien des Phosphates and another v Yamashita-Shinnihon Steamship Co Ltd; The Boucraa [1994] 1 All ER 20, HL (refd)
Lim Phin Khian v Kho Su Ming [1996] 1 MLJ 1, FC (refd)
McNaghten's Case [1843–60] All ER Rep 229, HL (folld)
Orchard Circle Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat & Ors [2021] 1 MLJ 180, FC (refd)
Planmarine AG v Maritime and Port Authority of Singapore [1999] 2 SLR 1, CA (refd)
R (on the application of PACCAR Inc and others) v Competition Appeal Tribunal and others [2023] UKSC 28, SC (refd)
Regina (Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department; Regina (O) v Secretary of State for the Home Department [2022] UKSC 3, SC (refd)
Shah Babulal Khimji v Jayaben D Kania (1981) 4 SCC 8, SC (refd)
Sia Cheng Soon & Anor v Tengku Ismail bin Tengku Ibrahim [2008] 3 MLJ 753, FC (refd)
Sundra Rajoo a/l Nadarajah v Menteri Luar Negeri, Malaysia & Ors [2021] 5 MLJ 209, FC (refd)
Tanalachimy a/p Thoraisamy & Ors v Jayapalasingam a/l Kandiah & Ors (sued as liquidators of the Great Alonioners Trading Corp Bhd) and another appeal [2014] 4 MLJ 85, CA (refd)
Tenaga Nasional Bhd v Kamarstone Sdn Bhd [2014] 2 MLJ 749, FC (refd)
Westcourt Corp Sdn Bhd lwn Tribunal Tuntutan Pembeli Rumah [2006] 1 MLJ 339, FC (refd)
Will v Hallock 546 US 345, 349 (2006), SC (refd)
Wilson v First County Trust Ltd [2003] 4 All ER 97, HL (refd)
Zhu Su v Three Arrows Capital Ltd and others and another matter [2024] SGCA 14, CA (refd)

Legislation referred to

Civil Law Act 1956 s 4(3)
Courts of Judicature (Amendment) Act 1994
Courts of Judicature (Amendment) Act 1995 s 17
Courts of Judicature (Amendment) Act 1998

Courts of Judicature (Amendment) Act 2022 s 8
Courts of Judicature Act 1964 ss 3, 42, 44, 67, 67(1), 68, 68(1)(e), (1)(f), (1)(g), 78, 80, 96, 97
Criminal Procedure Code s 51
Insolvency, Restructuring and Dissolution Act 2018 [SG] s 244
Interpretation Acts 1948 and 1967 s 17A
Interpretation Act 2002 [SG] s 9A, 9A(1)
Rules of Court 2012 O 18 r 19
Rules of the Supreme Court 1980 (repealed by Rules of the Federal Court 1995) r 56

Appeal from: *MT Ventures Sdn Bhd & Anor v QM Print Sdn Bhd* [2025] 2 MLJ 341 (Court of Appeal, Putrajaya)

Justin Voon Tiam Yu (with Melissa Chan Shyuk Wern) (Justin Voon Chooi & Wing) in Civil Appeal No 02(i)-6–03 of 2024(W) for the appellant.
M Pathmanathan (with Rutheran Sivagnanam, Shirin Pathmanathan and Chong Yi Zhen) (The Chambers of Sivagnanam & Assoc) in Civil Appeal No 02(i)-17–06 of 2024(W) for the appellant.
Ooi Chih Jen (with See Shu Min) (Ky Lim & Partners) in Civil Appeal No 02(i)-6–03 of 2024(W) for the respondents.
Austen Pereira (with Zulaikha Aini bt Mohamed Khair Johari) (Zulaikha Aini) in Civil Appeal No 02(i)-17–06 of 2024(W) for the respondents.
Rahazlan Affandi bin Abdul Rahim (with Liew Horng Bin) in Civil Appeal No 02(i)-6–03 of 2024(W) amicus curiae for the Attorney-General's Chambers.
Steven Thiruneelakandan (with Alvin Tang, Gregory Vinesh Das, Jeremiah Rais bin Badrul Hisham, Kelly Khoo Seo Ju and Nur Dalila bt Zulkarnain) in Civil Appeal No 02(i)-6–03 of 2024(W) amicus curiae for the Malaysian Bar.

Nallini Pathmanathan FCJ:

INTRODUCTION

[1] The primary issue in these appeals is whether the appellants have a right to appeal the dismissals of their respective interlocutory applications to strike out pleadings in view of the recent amendments to s 68 of the Courts of Judicature Act 1964, more particularly s 68(1)(f) of the CJA. Section 68(1)(f) of the CJA, as amended by s 8 of the CJA (Amendment) Act 2022, which states as follows:

> Section 68 CJA Non-appealable matters
>
> (1) No appeal shall be brought to the Court of Appeal in any of the following cases:
>
> ...

(e) where a High Court dismissed any application for a summary judgment; A

(f) *where a High Court dismissed any application to strike out any writ or pleading and*

(g) where a High Court allowed any application to set aside a judgment in default. B

[2] The question that arises for consideration for this court is the effect of s 68(1)(f) of the CJA: is the section to be read literally and in a grammarian fashion, or is it to construed holistically and purposively in line with the object and purpose of the entirety of the CJA in relation to civil appeals? C

[3] If the section is read literally, it would follow from sub-para (f) that all decisions of the High Court dismissing applications to strike out a writ or pleading would be unappealable. However, an approach in line with s 17A of the Interpretation Acts 1948 and 1967 may give rise to a different construction. D

[4] Consider for example a situation where a derivative action is filed but the threshold requirements are not met. This is a preliminary point of law that does not genuinely require the adducing of further oral evidence to determine whether or not the action is validly instituted under the law. If the High Court does not strike out the derivative action for failure to comply with threshold matters, it would follow that the matter would have to go through a full trial prior to adjudication on a point of law that could have been determined at the outset. E F

[5] The significant point to be made is that there is no requirement for further evidence and yet parties would be put to the expense, cost, and time of a full trial for no good reason. Similarly, with a case relating to locus or the capacity of a plaintiff to bring an action, the same result would ensue. Indeed, the strain of a prolonged and arguably unnecessary trial that is imposed on the litigants, and more importantly the considerable delay in determining the action are relevant matters for the purposes of construing the purpose and intent of the amendment introduced vide s 68(1)(f) of the CJA. G H

[6] Therefore, the question for this court is whether that was the actual intention and purpose of the amendment as it now subsists under s 68(1)(f) of the CJA. It might well be argued that that is indeed the intent of the Legislature in view of the clear and express words in the subsection. I

[7] However, would such an argument remain tenable where for example there is the necessity to determine a matter of state immunity?

[8] If a pleading which relies on state immunity is found to be insufficient to strike out a claim under O 18 r 19 of the Rules of Court 2012, it would then follow that the matter has to go through a full trial. The very purpose of state immunity as a public international law doctrine would be rendered nugatory. Can it be said that in such a situation a liter al meaning should be accorded to s 68 of the CJA? It would appear not.

See *Kerajaan Malaysia v LFL Sdn Bhd and another appeal* [2024] MLJU 3015 ('LFL'); see also *Sundra Rajoo a/l Nadarajah v Menteri Luar Negeri, Malaysia & Ors* [2021] 5 MLJ 209 ('Sundra Rajoo').

[9] Put simply, there are many preliminary points of law that fall to be considered and which may well finally determine parties' rights in a striking out application. Was it the intent of the Legislature to preclude such matters from being determined conclusively at the outset and to put the parties through the trial procedure? This would defeat the purpose of any attempt to expedite the clearing of cases through the courts. For this reason, we are of the view that the construction to be accorded to s 68(1)(f) of the CJA is not as straightforward as adopting a literal and grammarian approach. The construction of the subsection requires a consideration of the relevant provisions of the CJA so as to achieve a correct and harmonious reading of the same.

[10] We concluded that, when s 68(1)(f) of the CJA is construed holistically and harmoniously with s 67 of the CJA and necessarily s 3 of the CJA, it will be found to be applicable to cases where the High Court determines that further oral evidence needs to be adduced in order that it can arrive at a decision which finally disposes of the parties' rights. In such instances there is no right of appeal because the parties' rights have n ot been finally disposed of or fully adjudicated upon.

[11] As such the court effectively *defers* the final determination in these cases to enable the adducing of further oral evidence. To allow an appeal at this juncture would effectively mean an unwarranted interruption in the flow of the legal process, given the substantive right of appeal that each litigant is entitled to once the parties' rights have been finally disposed of. The failure to strike out at a preliminary point can comprise the subject matter of the appeal at the end of trial. However, where the striking out is targeted at a specific point of law which has the capacity to determine the entire cause or action finally, the right of appeal accrues or vests at that point.

THE HEARING BEFORE THIS COURT

[12] The parties, and consequently the courts below, saw the position differently and thus addressed the issues canvassed above through a different

lens. Their submissions and the courts' reasoning centred around the question of when the right to appeal vested in the parties and whether the amendment operated retrospectively so as to remove the right of the party to appeal the dismissal of a striking out.

[13] Due to the public importance of this legally complex issue, and indeed because it became apparent to us in the course of the hearing that there were other material issues that needed canvassing, we also invited amicus curiae, in particular the Attorney-General and the Bar, to submit on the issues as set out above.

[14] We commence with the material facts.

FACTS

[15] We begin by observing that our summary of the facts will be relatively brief, as the sole issue before us is whether the parties have a right to appeal the dismissal of their striking out applications, not whether the striking out applications themselves ought to succeed. This is primarily a question of law and will be addressed accordingly.

APPEAL NO 02(I)-6–03 OF 2024(W) ('MT VENTURES')

[16] The respondent is QM Print Sdn Bhd, a company carrying out business at a factory located at No 24, Persiaran 118C, Desa Tun Razak Industrial Park, 56000 Kuala Lumpur ('No 24 premises'). These premises were owned by an individual named Pan-Mei Yun, who authorised the respondent to conduct business in said premises. The No 24 premises were situated next to another property at No 22, Persiaran 118C within the same industrial park which was owned and/or occupied by the appellants ('No 22 premises').

[17] The first appellant, MT Ventures Sdn Bhd, is the registered owner of the No 22 premises, while the second appellant, Multi Top Auto Supplies Sdn Bhd, operated its business there as a tenant of the first appellant. On 2 July 2021, a fire broke out, allegedly originating from the No 22 premises, which caused damage to both the No 22 premises and the respondent's premises.

[18] By way of a letter of assignment dated 6 September 2021, Pan Mei-Yun purportedly assigned her rights to the respondent, authorising it to initiate legal action against the appellants.

[19] Subsequently, the respondent filed a suit against the appellants as the owners and/or occupiers of the No 22 premises, seeking damages for the losses

A incurred. The suit was commenced through a statement of claim dated 23 August 2022.

[20] In response, on 12 December 2022, the appellants filed an application in the High Court to strike out portions, pursuant to O 18 r 19, of the respondent's claim relating to Pan Mei-Yun and the costs for reinstating the respondent's premises, quantified at RM2,147,710.

[21] The High Court heard and dismissed the appellants' striking out application on 10 May 2023. The appellant, on 8 June 2023, filed a notice of appeal appealing this decision.

[22] The respondent then filed a motion to strike out the appellant's appeal on the grounds that the dismissal of a striking out application was non-appealable pursuant to s 68(1)(f) of the CJA. This motion was granted, and the appellant's appeal was struck out.

[23] The majority of the Court of Appeal accepted that the *Macnaghten* test, namely that the right of appeal vests at the time of the institution of the original proceedings, was the default principle to be applied.

[24] Nevertheless, the majority held that this presumption was displaced based on what they deemed a purposive interpretation of the statute. In particular, they explained that the purpose of the amendment to s 68 of the CJA was to ensure the Court of Appeal was not overwhelmed with interlocutory appeals.

[25] Therefore, Parliament intended to modify the *Macnaghten* test such that the right to appeal vested in parties at the time the decision to dismiss the striking out application was made and not when the suits were filed. In other words, all decisions to dismiss striking out applications given after the amendment came into force were non-appealable by virtue of s 68(1)(f) of the CJA.

[26] Supang Lian JCA, writing in dissent, held that the right to appeal was a substantive right and could not be taken away unless expressly done so. Such express provision was not made in the present statute and therefore Her Ladyship was of the opinion that the parties' right to appeal vested at the time of filing the original proceedings and was therefore not affected by s 68(1)(f) of the CJA.

APPEAL NO 02(I)-17–06 OF 2024(W) ('AZINAL') A

[27] The parties to the main suit are as follows: The first plaintiff is the daughter of the deceased Datuk AS Dawood, while the second and third plaintiffs are the administrators of the estates of the deceased's sons, Sulthan Batcha Datuk AS Dawood and Abdullah Datuk AS Dawood. B

[28] The first, second and third defendants are the children of the deceased with his late first wife Ammaji. The second defendant is additionally sued in his capacity as administrator of Ammaji's estate by virtue of a grant of probate dated 4 April 2014. C

[29] The fourth defendant is the daughter of the first defendant.

[30] The fifth defendant is a company incorporated in 1976 which, according to the plaintiffs, was established to hold assets for the benefit of the deceased's family. The sixth defendant is a company that purchased assets from the fifth defendant, namely the 180 acres of land which forms the subject matter of much of the present suit. The second defendant served as director of the sixth defendant from 26 March 1986 until 20 August 2003. The seventh defendant is another company incorporated by the first family, which received RM15,358,097.82 from the sale of the fifth defendant's assets-an amount said to represent Ammaji's shareholding value. D E

[31] Additional defendants include the eighth defendant, who is the wife of the second defendant; the ninth and tenth defendants, nephews of the first, second and third defendants; and the 11th defendant, son of the second and eighth defendants. These individuals (the eighth, ninth, tenth and 11th defendants) serve as directors of the seventh defendant. F G

[32] The main suit was filed in 2017, with its core allegation being that 540,000 shares in the fifth defendant were fraudulently transferred from the deceased to his first wife Ammaji. This alleged fraudulent transfer had significant consequences, most notably the subsequent sale of 180 acres of land from the fifth defendant to the sixth defendant, which the plaintiffs contend was possibly fraudulently approved given the initial allegation that Ammaji never rightfully held the shares that authorised such transaction. H

[33] The matter is complicated by the existence of prior litigation concerning substantially similar subject matter. This decision can be found at *Abdul Ravuff bin Datuk AS Dawood & Ors v Dr Abdul Rahiman bin Datuk AS Dawood (in his personal capacity and as administrator for the estate of Patama @ Ammaji Bibi bt Daud Sah) and other appeals* [2022] 4 MLJ 379. I

A **[34]** While a comprehensive examination of this court's decision in that case is unnecessary for present purposes, it is relevant to note that the previous suit concerned the validity of the sale of the same 180 acres of land. That case was premised on a claim of constructive trust allegedly arising from a 1981 agreement between the deceased and Ammaji regarding shares in Pasla
B Holdings. For completeness, it should be noted that the plaintiffs in the current suit were not parties to the earlier litigation.

[35] The sixth defendant, who is the appellant before us, filed a striking out
C application on 26 July 2022 premised upon O 18 r 19 essentially alleging that the plaintiffs' suit is barred by the doctrine of res judicata in light of the previous litigation concerning these matters.

[36] This application was dismissed by the High Court on 23 February
D 2023.

[37] This decision was appealed by the appellant to the Court of Appeal. The respondents took a preliminary objection that this was a non-appealable 'decision' pursuant to s 68(1)(f) of the CJA.

E

[38] The Court of Appeal agreed with the respondents and upheld the preliminary objection. The court here too purported to adopt a purposive approach to statutory interpretation.

F

[39] In doing so, they held the amendment aimed to curb interlocutory appeals that delay trials and overload the Court of Appeal. The legislative intent, as they suggested was reflected in the Hansard, was to ensure expeditious disposal of cases without prejudicing parties' rights to a full trial.
G The court rejected the appellant's argument that the amendment applied only prospectively, holding that it applied to decisions rendered after the amendment came into force, irrespective of when the suit was filed.

[40] The Court of Appeal further distinguished the appellant's case from the
H authorities cited, noting that those cases involved appeals after full trials, whereas the present case concerned an interlocutory matter where the parties' substantive rights had yet to be determined at trial. Even if a prospective application was adopted, they held that the language of the amendment meant that the date of the decision was what mattered. Consequently, the court
I allowed the preliminary objection and struck out the appeal as incompetent.

[41] It should be noted that in both appeals there was no consideration of the substantive merits of the striking out applications. Both appeals were immediately dismissed on the basis of s 68(1)(f) of the CJA.

THE QUESTIONS OF LAW

[42] On the basis of the Court of Appeal's reasoning, leave was granted on the following questions of law.

(a) whether s 68(1)(f) of the Courts of Judicature Act 1964 applies to prohibit an appeal against a decision of a striking out application filed in a suit which was commenced before the coming into force of the said s 68(1)(f) on 1 October 2022 pursuant to the amendment to s 68 of the Courts of Judicature Act 1964 vide s 8 of the Courts of Judicature (Amendment) Act 2022 ('the Amending Act')?

(b) whether the right to appeal in respect of a dismissal of a decision of a striking out application is taken away by s 68(1)(f) of the Courts of Judicature Act 1964 vide the Amending Act is a substantive right which may not be taken?

(c) whether the *MacNaghten* test encapsulated in the Federal Court case of *Lim Phin Khian v Kho Su Ming* [1996] 1 MLJ 1 applies to determine whether the amendment to include s 68(1)(f) of the Courts of Judicature Act 1964 vide the Amending Act prohibit the decision of a striking out application filed in a suit which was commenced before the coming into force of the said s 68(1)(f) on 1 October 2022?

(d) whether the Court of Appeal was correct to apply the Federal Court case of *Westcourt Corp Sdn Bhd lwn Tribunal Tuntutan Pembeli Rumah* [2006] 1 MLJ 339 to determine whether the amendment to include s 68(1)(f) of the Courts of Judicature Act 1964 vide the Amending Act prohibit the decision of a striking out application filed in a suit which was commenced before the coming into force of the said s 68(1)(f) on 1 October 2022? and

(e) whether the phrase 'where a High Court dismissed any application to strike out any writ or pleading' in s 68(1)(f) of the Courts of Judicature Act 1964 refers to a writ or pleading filed on/or after the coming into force of the said s 68(1)(f) of the Courts of Judicature Act 1964 pursuant to the amendment to s 68 of the Courts of Judicature Act 1964 vide the Amending Act?

[43] What is clear from these questions, and indeed the reasoning of the courts below, is that there was no consideration by the lower courts, in both the cases before us, of whether the right to appeal the dismissal of a striking out existed pre-section 68(1)(f) of the CJA. The parties, and indeed the courts below, presumed that a right to appeal existed and that the only question was whether s 68(1)(f) of the CJA took away that right.

[44] In the course of reading the parties' submissions, it became clear to us

A that much of the answer to the present appeal turned on the construction of the CJA's provisions outside of s 68 of the CJA, both pre- and post-amendment, and therefore had far-reaching implications for the legal community and the proper administration of justice more generally.

B **[45]** We therefore posed several questions to counsel in the course of the hearing, inter alia, in the form of a mind map to ascertain the proper approach to be adopted in arriving at a proper construction of s 68(1)(f) of the CJA. After we had done so, parties sought leave of court to have amicus curiae to address the court on these issues. Accordingly, parties filed further submissions C in response to our questions, as did amici curiae.

[46] The following were the additional questions of law the parties and the amici curiae were asked to submit on:

D (a) whether interlocutory decisions were non-appealable since the Amending Act A1031, came into force on 1 August 1998 which defines 'decision' as 'judgment, sentence or order but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties'? and E

(b) what is the effect of the amendment to s 68 of the CJA of the Courts of Judicature Act 1964 ('the CJA'), introduced vide s 8 of the Courts of Judicature (Amendment) Act 2022 ('the Amending Act'), which came into force on 1 October 2022, with regard to the entirety of CJA F particularly to s 3 of the CJA?

ISSUES

[47] In this vein, the following issues will be discussed: G

(a) the position in law prior to the amendment to s 68 of the CJA, in particular the construction of s 3 of the CJA and s 67 of the CJA;

(b) the position in law post the amendment of s 68 of the CJA;

H (c) do the parties in the present case possess a right to appeal the dismissal of their striking out applications? and

(d) alternative approach to resolution of these appeals.

The position in law prior to the amendment to s 68 of the CJA, in particular the I *construction of s 3 of the CJA and s 67 of the CJA*

[48] The position in law pre-amendment is of importance because it underscores the need to read s 68(1)(f) of the CJA holistically and in conjunction with s 67 of the CJA and s 3 of the CJA.

[49] In this context, it is necessary for us to first understand the effect of the two leading authorities on the construction of s 3 of the CJA and the CJA more broadly, namely this court's decisions in *Kempadang* and *Asia Pacific*.

Kempadang Bersatu Sdn Bhd v Perkayuan OKS No 2 Sdn Bhd [2019] 4 MLJ 614 ('Kempadang')

[50] In *Kempadang Bersatu Sdn Bhd v Perkayuan OKS No 2 Sdn Bhd* [2019] 4 MLJ 614, the Federal Court had to determine whether an order by the judicial commissioner that the quantum of damages were to be reassessed before a different registrar following the trial of a civil suit was a 'decision' that was appealable.

[51] In answering this question, the Federal Court had to consider whether the terms of the CJA, in particular s 3 of the CJA read with s 67 of the CJA, permitted the appeal of such an order.

[52] Section 67(1) of the CJA essentially confers general jurisdiction upon the Court of Appeal to determine appeals from 'any judgment or order ... in any civil cause or matter', subject of course to terms in written law regulating the bringing of appeals. Section 67 of the CJA in full reads as follows:

> 67 Jurisdiction to hear and determine civil appeals
>
> (1) The Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or order of any High Court in any civil cause or matter, whether made in the exercise of its original or of its appellate jurisdiction, subject nevertheless to this or any other written law regulating the terms and conditions upon which such appeals shall be brought.
>
> (2) The Court of Appeal shall have all the powers conferred by section 24A on the High Court under the provisions relating to references under order of the High Court.

[53] Section 3 is the interpretation section of the CJA. One of the terms it defines is 'decision' and it does so as follows:

> 'decision' means judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties.

[54] It was contended in *Kempadang Bersatu Sdn Bhd v Perkayuan OKS No 2 Sdn Bhd* [2019] 4 MLJ 614 that the absence of the word 'decision' in s 67(1) of the CJA meant that s 3 of the CJA did not apply so as to restrict the types of appeals that could be determined by the Court of Appeal. Put another way, s 3 of the CJA did not limit the general jurisdiction conferred upon the Court of Appeal by s 67 of the CJA.

[55] Zainun Ali FCJ, speaking for the Federal Court, explained that this cannot be correct. The words 'judgment' and 'order' appear in s 67 of the CJA and are included within the s 3 of the CJA definition of 'decision'. As a civil court does not impose a sentence, it was perfectly reasonable that the word 'decision' as defined in s 3 of the CJA was not expressly used within s 67 of the CJA; this does not mean s 3 of the CJA does not apply to civil appeals.

[56] To put it as Zainun Ali FCJ did, 'the words 'judgment' and 'order' (in) sub-s 67(1) indicate(s) the form a 'decision' will take in s 3 of the CJA where the word 'sentence' is absent'. Therefore, it is still the case that s 3 of the CJA and s 67 of the CJA should be read together such that s 3 of the CJA applies to delim it the jurisdiction of the Court of Appeal conferred by s 67 of the CJA.

[57] Zainun Ali FCJ reached this conclusion by placing particular emphasis on the 'purpose of the amendment' to the CJA where it amended the definition of 'decision'. Her Ladyship explained that it is clear, premised upon the purpose of the amendment as in part gleaned from the explanatory statement to the amending bill, that the definition of 'decision' in s 3 of the CJA was intended to apply to civil appeals.

[58] Her Ladyship also explained that s 3 of the CJA can essentially be split into 'two parts'. The first part defines what a 'decision' is, namely a 'judgment, sentence or order' while the second part excludes certain matters from falling within this definition. In particular, it excludes 'any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties'.

[59] For something to be a 'ruling' such that it is not a 'decision' and therefore appealable, Zainun Ali FCJ explained that the order in question needed to be both in the course of a trial or hearing of any cause or matter *and* an order which does not finally dispose of the rights of the parties.

[60] The importance of *Kempadang* in the context of the present appeal is that s 67 of the CJA has to be construed with s 3 of the CJA. As s 67 of the CJA cannot be read in vacuo but should be read in conjunction with s 3 of the CJA, it follows that s 68 of the CJA too should be read together with s 67 of the CJA and s 3 of the CJA.

Asia Pacific Higher Learning Sdn Bhd v Majlis Perubatan Malaysia & Anor [2020] 2 MLJ 1 ('Asia Pacific')

[61] In *Asia Pacific Higher Learning Sdn Bhd (registered owner and licensee of the higher learning institution Lincoln University College) v Majlis Perubatan*

Malaysia & Anor [2020] 2 MLJ 1, the plaintiff applied to reamend an already amended statement of claim by including a claim for special damages. This amendment was allowed by the High Court. On appeal, the Court of Appeal reversed this decision and disallowed the amendment. Raised as a preliminary point, the question before the Federal Court, was whether the Court of Appeal had jurisdiction to hear the appeal from the High Court.

[62] The majority in *Asia Pacific* grounded much of their reasoning in a contextual reading of the CJA. It adopted what it called the 'time honoured guidelines of contextual interpretation' in construing 'judgment' and 'order'.

[63] This rule of statutory interpretation provides in essence that the court may use the doctrine of associated words in construing terms such as judgment and order from other words which are similar, such that it was in order to conclude that the words 'judgment' and 'order' take their meaning from the term 'decision' as defined in s 3 of the CJA. *As such a judgment and order, like the term 'decision' would not include a 'ruling' made in the course of tri al or hearing of any cause or matter that does not finally dispose of the parties' rights* (see *All Malayan Estates Staff Union v Rajasegaran & Ors* [2006] 6 MLJ 97 at [14] ('Rajasegaran')). To quote from the *Rajasegaran*: 'The exact colour and shape of the meaning of any word in a statute is not to be ascertained by reading them in isolation but in the context of the other enacting parts of the statute ... It has been held that words must be read structurally and in their context for their significance may vary with their contextual setting'.

[64] In essence, *Asia Pacific* confirms the approach adopted in *Kempadang*, namely that s 3 of the CJA and s 67 of the CJA should be read together such that s 3 of the CJA is applicable to delimit the proceedings in which civil appeals can be brought. As such, for the purposes of this appeal as stated earlier, s 3 of the CJA should be read as operating together with s 67 of the CJA and s 68(1)(f) of the CJA to determine whether the dismissal of a striking out of a pleading or writ can, or cannot, comprise the subject matter of an appeal.

Analysis

[65] *Asia Pacific* therefore both confirms and reiterates the legal position in *Kempadang* that when construing s 67 of the CJA, it is necessary to consider s 3 of the CJA.

[66] Further, as stated by Idrus Harun FCJ, it is necessary to consider the second limb within the definition of 'decision' in s 3 of the CJA which requires ascertaining whether there is a final disposition of the parties' rights, in determining whether a matter is appealable or not (*Asia Pacific*, at [110]).

If s 67 requires a consideration of s 3 of the CJA, then what is the position in relation to the construction and application of s 68(1)(f) of the CJA?

[67] Progressing from the decisions in both *Kempadang* and *Asia Pacific*, it follows that s 3 of the CJA, in like manner, ought to be taken into consideration and applied when construing s 68(1)(f) of the CJA. Our reasons for so concluding are as follows:

(a) s 67 confers a general jurisdiction on the Court of Appeal to hear all appeals in respect of any civil cause or matter. That accords the court a broad jurisdiction, seemingly without limit;

(b) s 68 of the CJA limits the nature of appeals that can be brought to the Court of Appeal, including s 68(1)(f) of the CJA which precludes the bringing of appeals in respect of the dismissal of an application to strike out a pleading or writ;

(c) therefore s 68 of the CJA has to be read in conjunction with s 67 of the CJA as the former provides the exceptions to the general nature of the latter. And s 68(1)(f) of the CJA is a part of s 68 of the CJA;

(d) however, s 67 of the CJA cannot be construed without reading into it, s 3 of the CJA. And in this context s 3 of the CJA (as held in *Kempadang* and *Asia Pacific*) delimits the types of appeals that can be brought. It precludes rulings made in the course of a trial or hearing which *do not* finally dispose of the rights of the parties. Conversely, where a court has made an order in the course of a trial or hearing which *does* finally dispose of the rights of the parties, it is appealable;

(e) if s 68(1)(f) of the CJA is to be construed in conjunction with s 67 of the CJA and s 3 of the CJA, it then follows that s 68(1)(f) of the CJA should be read to take into consideration s 67 of the CJA as well as s 3 of the CJA, which precludes any appeal from an order which *does not* finally dispose of the rights of the parties;

(f) s 68(1)(f) of the CJA would also have to be interpreted in consonance with ss 67 and 3 of the CJA where an order *does* finally dispose of the rights of parties. This in turn means that orders for the striking out of a writ or pleading which *do* finally dispose of the rights of parties would not be a 'ruling' under s 3 of the CJA;

(g) and where a 'decision' does dispose of the rights of parties finally it *is* appealable *under* s 67. As such, s 68(1)(f) of the CJA has to be read harmoniously with both ss 67 and 3 of the CJA. Therefore s 68(1)(f) of the CJA has to be construed so as to provide an exception to s 67 but not so as to take away a substantive right of appeal that accrues to a party;

(h) *where a decision finally disposes of a party's rights, then a right of appeal accrues to, or vests in that party in accordance with ss 67 and 3 of the CJA.*

That right of appeal is not taken away by s 68(1)(f) of the CJA, which serves to ensure that appeals are not taken in instances where no rights have finally been disposed of. In short, s 68(1)(f) of the CJA serves to clarify the entrenched position in law that generally no appeals are available *under* ss 67 and 3 of the CJA where no rights of the parties have been finally disposed of;

(i) s 68(1)(f) of the CJA does not come into play where the striking out of a writ or pleading *finally disposes* of the parties' rights;

(j) if s 68(1)(f) of the CJA is so read, it follows that it cannot be construed to be applicable in toto to all dismissals of applications to strike out a writ or pleading; and

(k) in other words, s 68(1)(f) of the CJA cannot be construed in vacuo and literally so as to warrant a reading that *all dismissals of applications to strike out a writ or pleading are unappealable.*

[68] In order to determine whether such a dismissal of a striking out of a writ or pleadings is appealable or not, it is necessary to ascertain whether it disposes of the rights of the parties finally or not. Any such application would also have to be made in the course of the trial or hearing of the cause or matter.

[69] As stated at the outset when the dismissal of a striking out of a writ or pleadings relates to a question of locus or state immunity or other threshold conditions, then s 68(1)(f) of the CJA does not operate so as to preclude an appeal on such a dismissal. Such a construction allows for the continued bringing of applications to strike out on preliminary points or issues which do not warrant going through a full trial. And the reason why this is permissible under the provisions of the CJA is because the determination of the preliminary point has the effect of disposing of the rights of the parties finally. If a preliminary point or issue does not have such an effect then it remains unappealable.

[70] This also aligns with the purpose and object of the Act which is to ensure an expeditious disposal of the cause or matter. It does not align with the purpose of the Act to go through a full hearing of a cause or matter where that cause or matter can be determined preliminarily on a point of law.

[71] Having established the foregoing, we flesh out the underlying law supporting the legal construction of s 68(1)(f) of the CJA above.

Purposive interpretation

[72] The starting point is understanding that having regard to the purpose of legislation is a key element of interpreting statutes; purpose is not merely a

secondary tool to be had regard to when statutes are ambiguous. To use the words of Lord Sales in *R (on the application of PACCAR Inc and others) v Competition Appeal Tribunal and others* [2023] UKSC 28 at [41], '[t]he purpose and scheme of an Act of Parliament provide the basic frame of orientation for the use of the language employed in it'.

[73] In Malaysia especially, having regard to the statutory mandate outlined by s 17A of the Interpretation Acts 1948 and 1967 ('the Interpretation Acts'); statutory construction is not a matter left to the interpretive choices of judges. Section 17A provides as follows:

> 17A Regard to be had to the purpose of the Act
>
> In the interpretation of provision of an Act, a construction that would promote the purpose of object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

[74] The significance of s 17A as prescribing a purposive approach has been recognised by our apex court numerous times. See for example, Zabariah Yusof FCJ in *Orchard Circle Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat & Ors* [2021] 1 MLJ 180, [50]:

> [50] Statutory recognition has been given to the purposive interpretation of statutes when s 17A of the Interpretation Acts 1948 and 1967 was inserted via Act A996 which reads ...

(See also *Detik Ria Sdn Bhd v Prudential Corp Holdings Ltd & Anor* [2025] 3 MLJ 22 at [29].)

[75] As put by VK Rajah JA in respect of s 9A(1) of the Singaporean Interpretation Act (Cap 1, 2002 Rev Ed) which is pari materia with our s 17A, 'any discussion on the construction of statutes necessarily takes place against the backdrop of s 9A of the Interpretation Act. The provision seeks to highlight the importance of adopting a purposive approach in the course of the courts' interpretation of statutes in order to promote the underlying purpose behind the legislation'.

[76] In other words, the language of a statute cannot be fully understood before one has regard to its purpose. The purpose of the statute is engaged immediately; ambiguity or anything else is not a precondition to the consideration of purpose. As stated by the Federal Court in *Detik Ria Sdn Bhd v Prudential Corp Holdings Ltd & Anor* [2025] 3 MLJ 22, [29]:

> [29] *Previously the approach adopted by the courts was to adopt the English common law approach of utilising the literal construction first, and only if an ambiguity arose, would*

the courts turn to the purposive approach. Further a literal approach was applied as amounting to a reference to solely the precise text of the phrase or sentence or section in issue. *Such an approach is not, with the greatest respect, the ideal mode of construction to be adopted. First, in light of the existence of s 17A of the Interpretation Acts 1948 and 1976, the statute-prescribed approach necessarily outflanks the common law approach, as a matter of law. And s 17A prescribes an approach that takes into account the purpose and object of the law in construing the text in issue. Therefore, all construction should take into account the purpose and object of the legislation in question*. This in turn means adopting a construction that is holistic in that it interprets not only the section in issue but also how the section interacts with the rest of the legislation. *Ultimately the construction to be adopted should resonate with the purpose and objective of the legislation and harmoniously so with the rest of the statute, in principle.* (Emphasis added.)

[77] The Federal Court held that courts should apply the statutory purposive approach in *Bursa Malaysia Securities Bhd v Mohd Afrizan bin Husain* [2022] 3 MLJ 450, [77]:

[77] Regrettably neither the High Court nor the Court of Appeal undertook any sort of consideration of the purpose nor principles set out in the rules in order to ascertain the meaning to be accorded to the word 'shall' in r 16.11(2). This was explained on the basis that as there was no ambiguity there was no necessity to consider anything other than the express words used. This was understood to amount to a literal reading of the relevant rule falling for consideration. In so doing, the Court of Appeal misunderstood the function and purpose of the literal rule of statutory construction. Reading the express words set out in a statute in vacuo, and without taking into consideration the context in which those words are utilised, does not amount to a literal approach to statutory interpretation. That is a grammatical application of the meaning of words. Section 17A of the Interpretation Acts requires that the purpose and object of an Act and other instruments made under an Act must be undertaken when construing a statute. As s 17A is a statutory provision, it must be complied with. Therefore, both the High Court and the Court of Appeal, in failing to undertake this task as provided for in s 17A, committed an error of law.

[78] See also the Singaporean Court of Appeal speaking through M Karthigesu JA at [22] in *Planmarine AG v Maritime and Port Authority of Singapore* [1999] 2 SLR 1:

Following the clear wording of s 9A of the Interpretation Act, there is no blanket rule that a provision must be ambiguous or inconsistent before a purposive approach to statutory interpretation can be taken.

[79] Even in other jurisdictions where there is no statutory frame of reference like our Interpretation Acts, it is made clear that the modern approach to statutory interpretation requires considering text in light of its context and purpose. The Supreme Court of Canada held in *Canada (Minister*

of Citizenship and Immigration) v Vavilov 2019 SCC 65 at [118]–[119]:

> [117] A court interpreting a statutory provision does so by *applying the 'modern principle' of statutory interpretation, that is, that the words of a statute must be read 'in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament*': *Re Rizzo & Rizzo Shoes Ltd* [1998] 1 SCR 27, at para 21, and *Bell ExpressVu Limited Partnership v Rex* [2002] SCC 42; [2002] 2 SCR 559, at para 26, both quoting E Driedger, *Construction of Statutes* (2nd Ed, 1983), at p 87 ...
>
> [118] *This court has adopted the 'modern principle' as the proper approach to statutory interpretation, because legislative intent can be understood only by reading the language chosen by the Legislature in light of the purpose of the provision and the entire relevant context*: Sullivan, at pp 7–8 ... (Emphasis added.)

Amendment to the CJA and insertion of s 3 of the CJA vide Amendment Act 1998 — To expedite court proceedings primarily in the appellate courts

[80] The specific amendments made in 1998 when amending the CJA to include the definition of 'decision' was made with express reference to the government's aspiration to provide an efficient system of administering justice. It is expressly said in the Hansard that the amendments are made with the purpose of *speeding up* the hearing process of cases in the Court of Appeal and Fed eral Court and that the specific procedures that are proposed to be amended have contributed to delays i n the process of judicial administration. Deputy Minister in the Prime Minister's Department, Datuk Haji Mohamed Nazri bin Abdul Aziz said in proposing the amendments (see the Hansard for the Second Reading of the Courts of Judicature (Amendment) Bill 1998 dated 12 May 1998):

> Tuan Yang di-Pertua, selaras dengan hasrat kerajaan untuk memberikan *satu sistem pentadbiran keadilan yang cekap kepada orang ramai*, maka beberapa tatacara tertentu di bawah Akta Mahkamah Kehakiman 1964 yang telah dikenal pasti sebagai *antara faktor yang menyumbang kepada kelewatan proses pentadbiran* keadilan di mahkamah adalah dicadangkan supaya dipinda. Pindaan adalah dicadangkan untuk dibuat kepada seksyen-seksyen 3, 10, 42, 44, 78, 80, 96 dan 97 Akta Mahkamah Kehakiman 1964. Ia adalah dibuat dengan *tujuan untuk mempercepatkan proses pendengaran* kes-kes di mahkamah-mahkamah atasan khususnya Mahkamah Persekutuan dan Mahkamah Rayuan ...
>
> Alasan-alasan pindaan secara terperinci adalah seperti berikut:
>
> (i) pindaan kepada seksyen 3 adalah melibatkan penggantian, takrif 'decision', dengan izin, supaya ia tidak meliputi keputusan yang tidak membuat penentuan muktamad tentang hak pihak dalam sesuatu perbicaraan
>
> ... (Emphasis added.)

[81] While purpose is not purely to be construed by reference to what the

Minister says in the Hansard, this purpose is self-evidently borne out by a proper appreciation of all the amendments that came into force at the same time s 3 of the CJA was amended to include the word 'decision'.

[82] In particular, these were the other amendments made:

(a) ss 42 and 78 were amended to allow hearings in the Court of Appeal and Federal Court to be concluded by the remaining judges, where any judge originally part of the panel is unable to continue hearing the case, provided there are no fewer than two judges;

(b) the amendments to ss 44 and 80 introduce a *specific time limit of ten days* for any aggrieved party to file an application for a review of an order made by a single judge b efore a panel of three judges in the Court of Appeal and Federal Court. Prior to this, the absence of such a time limit caused delay in the resolution of the case;

(c) s 96 was amended to codify the applicable test for leave to appeal to the Federal Court; and

(d) the amendment to s 97 empowered applications for leave to appeal to the Federal Court to be heard by a single judge. Prior to this, such applications required a panel of three Federal Court judges.

[83] What is therefore clear is this: every amendment made in the Amending Act of 1988 in amending the CJA removed some form of delay either by the creation of a time limit or by giving powers to the appellate judiciary to remove delay eg by concluding a hearing with two judges without the consent of the parties.

[84] Indeed, the general purpose of the CJA should also be appreciated. The CJA lays out a set of rules for the just and expeditious disposal of the cases that come before the courts. In relation to the Rules of Court 2012, David Wong JCA's (as he then was) exposition in *Christopher ak Bandi @ Josny v Tumbung ak Nakis & Anor (Jamil bin Sindi, third party)* [2016] 4 MLJ 100 ('Christopher ak Bandi') of what expeditious disposal looks like is highly instructive:

> [19] ... As pointed out by the learned Chief Judge of Malaya, the Rules of Court 2012 now provides robust pre-trial case management by the courts before the trial is set down. *The philosophy behind the new regime of civil procedure is simply to attend a 'just, expeditious and economical' disposal of an action. Litigants through their respective counsel must understand that they must put their house in order before a case goes to trial and once the trial commenced courts will not tolerate any delay except in the most exceptional circumstance*. Putting one's house in order simply means that parties and their counsel must be aware that they have a duty to frame their case fully in all their causes of action and defences prior to the start of trial. *Conducting one's case by instalment must not be allowed in the context of the present regime of civil procedure. It is an undeniable fact that many cases had been stayed pending appeals to higher courts*

A *on matters similar to the factual matrix in this case, which undoubtedly had delayed the disposal of these cases.* (Emphasis added.)

[85] Therefore, s 3 of the CJA should be read in light of its specific purpose of reducing delay as well as in light of the general purpose of the CJA as
B providing rules for the efficient administration of justice.

[86] At this juncture, it is worth reproducing s 3 of the CJA once again so that the most relevant parts of s 3 of the CJA can be properly understood. Section 3 of the CJA defines 'decision' as meaning 'judgment, sentence or
C order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties'.

Judgment, order and ruling

D

[87] The terms 'judgment', 'order', and 'ruling' do not have inherent meanings which serve any useful purpose in construing their meaning as expressed in s 3 of the CJA.

E

[88] It can be said perhaps that the term 'judgment' has an obvious meaning in that it is the 'judgment' the court pronounces at the end of hearing the parties' full case. In other words, it is a full 'decision' on the substantive merits of the parties' case.

F

[89] Yet, this is neither satisfactory nor sufficient in demonstrating the meaning of the word 'judgment'; the words in the statute should be construed in its context. In other words, it should be construed as expressed in the present statute and not simply by reference to what one thinks it may mean literally.

G

[90] In the present case, it is clear the Act envisions the touchstone of 'judgment' and 'order' as being matters which finally dispose of the parties' rights. Put another way, it is only a final 'judgment' or 'order' that is appeal able. This is evidenced by a number of textual indications.

H

[91] First, the words 'judgment' and 'order' are used with the word 'sentence'. While the word 'sentence' of course is inapplicable to the civil context, it is clear that it connotes an element of finality of disposition of the parties' rights. Therefore, the terms 'judgment' and 'order' should be construed
I similarly.

[92] Secondly, judgment and order, while they differ in terms of definition, both need to display the element of finality when construed in the context of s 3 of the CJA, because that is a pre-requisite for the ability to appeal. In that

context, it is important to note that it is not every order that is appealable but only those which have the character of disposing of the parties' rights.

[93] Thirdly, it is significant that the Legislature chose to use both the words judgment as well as order. If it had been the intention of the Legislature that only final judgments were appealable and none other, then there would have been no requirement to include the word 'order'. However, the fact that it is included in s 3 of the CJA clearly allows for orders which are not judgments per se to be appealable provided they finally dispose of the parties' rights.

[94] It is necessary in every instance to analyse whether an order disposes finally of parties' rights before determining whether an 'order' is appealable or not. In the context of the present appeal, it follows that a dismissal of a striking out of a writ or pleadings gives rise to an 'order'. Whether or not such an order is appealable will depend on whether it finally disposes of parties' rights or otherwise. Again, we reiterate our earlier paragraphs that preliminary issues or points which finally dispose of the parties' rights are appealable.

[95] Fourthly, the term 'ruling', which will return to in greater depth shortly, is expressly excluded from the trio of words that constitute appealable 'decisions'. The fact that final disposition of the parties' rights constitutes a key factor in determining the meaning of 'ruling' demonstrates that it is finality which is crucial in determining appealability.

[96] Such an interpretation of s 3 of the CJA is also supported by the common law. As the Attorney-General notes in their submissions, the phrase 'finally disposes of the rights of the parties', which is almost identical to the phrase used in s 3 of the CJA, is the exact test used in the seminal case of *Bozson v Altrincham Urban District Council* [1903] 1 KB 547 to determine if a decision on an application is appealable.

[97] Indeed, even in the Malaysian context, prior to the amendment to include the definition of 'decision' in its present form, courts determined appealability by whether the order 'has a final effect and disposes of the right of the applicant' (*Ang Gin Lee v Public Prosecutor* [1991] 1 MLJ 498).

[98] The point therefore is that the test of finality is the touchstone of construing whether something constitutes an appealable 'decision'; therefore, it is only a 'judgment' or 'order' that 'finally disposes of parties' rights' that is appealable. Indeed, as will be canvassed in the subsequent paragraphs, the requirement of finality in relation to the parties' rights does not preclude appeals on all applications; a final disposition of parties' rights may include in certain circumstances a 'decision' made in an interlocutory application.

[99] A similar approach should be applied to determining the definition of the word 'ruling' and therefore the scope of non-appealable matters. It bears noting again that the term 'ruling' does not have an inherent meaning that assists us in understanding the ambit of this exception to 'decision'. To illustrate, a 'ruling' as defined by *Merriam-Webster* is 'an official or authoritative decision, decree, statement, or interpretation (as by a judge on a point of law)'. This would self-evidently include almost anything a court does; indeed, the fact the word 'decision' is a part of the definition of 'ruling' illustrates to us that a literal interpretation of the word 'ruling' offers us no guidance as to what the CJA means by this word.

[100] A 'ruling', construed literally and in isolation, can include a final judgment on the merits as well as any order by a court. In other words, the words 'judgment' and 'order' in s 3 of the CJA are equally unhelpful for our purposes because the 'ruling' exclusion, if literally construed, may in theory include a 'judgment' or an 'order'.

[101] What this means is that the word 'ruling' takes its meaning and character from the words in the Act that are used to describe it; it has no independent or autonomous meaning in the present context that serves any use.

[102] Therefore, in order for this exception to 'decision' to apply such that something is non-appealable, the ruling, or in the present case the dismissal of the striking out, should be both a 'ruling ... which does not finally dispose of the rights of the parties' and also a 'ruling made in the course of a trial or hearing of any cause or matter' (see *Kempadang* at [49] and *Asia Pacific* at [109]–[110]).

Key requirement of s 3 of the CJA: Final disposition of rights

[103] The key requirement for s 3 of the CJA non-appealability is that the 'ruling' in question 'does not finally dispose of the rights of the parties'.

[104] It is at this juncture apposite to address what constitutes the 'rights of the parties'. When addressing the question of how s 3 of the CJA bears on interlocutory appeals generally, the Bar contends that interlocutory applications may not finally dispose of the rights of the applicant whereas the appellants contend that interlocutory applications do not finally dispose of the rights of the applicant because a decision on those applications are not final findings on liability and quantum. To be clear, both the Bar and the appellants conclude that interlocutory applications are appealable but they premise this conclusion on the basis that a decision on interlocutory applications is not 'in the course of' the hearing of said application and is therefore appealable.

[105] The latter submission on the meaning of 'in the course of' will be addressed later. What we are concerned with first is the appellants' submission that interlocutory applications, generally speaking, do not finally dispose of the parties' rights.

[106] This is misconceived. At the outset, it should be recalled that the word 'interlocutory' is not used in the relevant provisions of the CJA. It should also be recalled that the question in the present case concerns the interpretation of the CJA in the specific context of the dismissal of striking out applications.

[107] The fundamental flaw with this reasoning is the conflation of the disposal of the 'rights' of the parties with the disposal of the full case finally. David Wong FCJ stated in his dissent in *Asia Pacific* at [64]:

> The test is 'the order must therefore be a final order in the sense that it is final in the effect as in the case of a judgment or a sentence'. Again, with much respect, I cannot agree with this principle as this would go against the very essence of s 3 of the CJA, which is the final disposal of the rights of the parties albeit being made during the course of a trial. *I pause to stress on the 'disposal of the rights of the parties', and that it is markedly different to 'disposal of the case'.* (Emphasis added.)

[108] It is well settled that the rights being considered are not solely rights of the parties in relation to the whole matter. As pointed out earlier, if that was indeed the intention of the Legislature then there would be no necessity for the word 'order' to be included in the definition of 'decision' in s 3 of the CJA. The word judgment would have sufficed. In any event there is cogent case-law to suggest otherwise than as submitted by the appellants and the Bar.

[109] In *Dato' Seri Anwar bin Ibrahim v Public Prosecutor* [2010] 2 MLJ 312 ('Anwar Ibrahim'), the appellant applied to compel the public prosecutor to furnish him with information and documents he believed he was owed, premised upon s 51 of the Criminal Procedure Code. Section 51 of the CPC reads as follows:

> 51 Summons to produce document or other things.
>
> (1) Whenever any Court or police officer making a police investigation considers that the production of any property or document is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before that Court or officer, such Court may issue a summons or such officer a written order to the person in whose possession or power such property or document is believed to be requiring him to attend and produce it or to produce it at the time and place stated in the summons or order.

A (2) Any person required under this section merely to produce any property or document shall be deemed to have complied with the requisition if he causes the property or document to be produced instead of attending personally to produce the same.

B (3) Nothing in this section shall be deemed to affect the provisions of any law relating for the time being in force or to apply to any postal article, telegram or other document in the custody of the postal or telegraph authorities.

C **[110]** The High Court granted most of the applicant's request. The Court of Appeal overturned this. There was then a preliminary objection taken by the appellant at the Federal Court, namely the applicant under s 51 of the CPC, that the ruling under s 51 of the CPC did not finally dispose of the rights of the parties. The appellant argued that this was because the word 'rights' in s 3 of the CJA referred solely to whether the appellant was innocent or guilty of the charge facing him. Put simply, it was argued it is the appellant's final substantive rights under the suit that were relevant under s 3 of the CJA and nothing else.

E **[111]** This Court in *Anwar Ibrahim* rejected this argument and in doing so explained that the appellant's right under s 51 of the CPC is an independent right worthy of protection. In other words, 'rights' under s 3 of the CJA extend beyond the final substantive rights of the parties but may also include ancillary rights within or independent of the suit at hand. The court held in *Anwar Ibrahim* at [22]–[24]:

F [22] Having considered the respective stands taken by both parties we are constrained to overrule this preliminary objection.

G [23] *Section 51 of the CPC gives the appellant certain rights. These 'rights', in our view, are the rights referred to under s 3 of the CJA*. The application by the appellant to have access to the various documents and materials is in fact an exercise of that right given to him by s 51 of the CPC which says:

...

H The order made by the High Court in allowing access to some of the documents and materials has, in effect, disposed of the rights of the appellant under s 51 of the CPC. It is not an interlocutory order, nor one that was made in the course of a trial. It stands on its own.

I [24] *Further, the application made by the appellant stands independently of the trial. It sought for a determination of the appellant's right pursuant to s 51 of the CPC. Thus the order made by the learned judge on that application is a final order that has finally disposed of the rights of the appellant*. It has disposed of the matter in dispute. It is therefore appealable. We therefore affirm this part of the judgment. (Emphasis added.)

[112] The grant of the documents disposed of the parties' rights 'finally' in the sense that the respondent would be forced to turn the documents over even when it had no legal duty to do so. Conversely, an applicant under s 51 of the CPC may, by not being given access to the necessary documents, plausibly be deprived of material which could assist him in his defence. To that end, it is a final disposal of his right to procure documents which could assist him in the cause of his defence.

[113] Therefore, there are two types of 'rights' that if finally disposed of, will fall with in the definition of a s 3 of the CJA 'decision'. These rights would be either 'rights' under a judgment or 'rights' under an order.

[114] First, there are the parties' substantive rights at issue in the entire suit; these can be referred to as 'rights' under a judgement. Where the court pronounces judgment on the entire claim, this is the paradigm example of a final disposal of the parties' rights, more specifically the parties' substantive rights at issue in the litigation.

[115] Notably, there can also be final disposal of the parties' rights in the entire suit where the court makes an order that substantially prejudices the rights of one of the parties under the judgment, prior to actual judgment on the whole case. In other words, a test or indication of whether there has been a final disposal of the parties' rights is 'prejudice'. However, it is not a freestanding test of prejudice that determines whether something is appealable. There should be prejudice going to a disposition of the parties' rights with a degree of finality that suffices the threshold for appeal ability.

[116] On the other hand, where one needs further oral evidence to determine an issue, namely where said evidence is needed for the courts to properly adjudicate upon a claim, the matter is non-appealable as there cannot truly be said to have been a final disposition of rights. In other words, where the court is merely deferring its decision in order to hear evidence, the matter is non-appealable. And this indeed will be the case in a majority of striking out applications where the court exercises its jurisdiction on the basis that it needs to hear further evidence in order to adjudicate on the matter fully.

[117] Consider however the denial of an application for discovery. If the denial of discovery has prejudiced the applicant's case to an extent that it has seriously prejudiced the applicant's ability to bring their full case, it has in effect finally disposed of the parties' rights in the entire suit. Therefore, the denial of such an application could, depending on the particular circumstances of a case, constitute a 'decision' under s 3 of the CJA, that is appealable.

[118] In India for instance, the Supreme Court of India in *Shah Babulal*

Khimji v Jayaben D Kania (1981) 4 SCC 8 ('Shah Babulal') had to interpret the word 'judgment' to determine what constituted a 'judgment' such that one could appeal.

[119] In interpreting this term, the Supreme Court of India explained that appealable decisions are those that decide matters of moment and crucially those decisions which affect valuable rights of the parties so as to work serious injustice.

> ... *Thus, in other words every interlocutory order cannot be regarded as a judgment but only those orders would be judgments which decide matters of moment or affect vital and valuable rights of the parties and which work serious injustice to the party concerned.*

[120] While of course the statutory context differs, the point is that injustice and prejudice to the parties is a necessary consideration in determining whether the rights of the parties have been disposed of finally. Indeed, this is what the Supreme Court of India in *Shah Babulal* alludes to when it explains that *it is interlocutory orders which cause serious injustice which have the 'characteristics of finality'*.

> We might give another instance of an interlocutory order which amounts to an exercise of discretion and which may yet amount to a judgment within the meaning of the Letters Patent. Suppose the Trial Judge allows the plaintiff to amend his plaint or include a cause of action or a relief as a result of which a vested right of limitation accrued to the defendant is taken away and rendered nugatory. It is manifest that in such cases, although the order passed by the trial Judge is purely discretionary and interlocutory it *causes gross injustice to the defendant who is deprived of a valuable right of defence to the suit. Such an order, therefore, though interlocutory in nature contains the attributes and characteristics of finality and must be treated as a judgment within the meaning of the Letters Patent*. This is what was held by this Court in *Shanti Kumar*'s case (supra), as discussed above. (Emphasis added.)

[121] Second, there are rights that are separate from the parties' substantive rights under the suit but are also crucial to the parties. These freestanding rights may be, but do not have to be connected to the suit. These can be referred to as 'rights' under an order. Indeed, the best example of freestanding rights that are nonetheless connected to the main suit is this court's decision in *Anwar Ibrahim* as described earlier.

[122] The decision in *Anwar Ibrahim* in some sense is analogous to the Singaporean Court of Appeal's decision in *Zhu Su v Three Arrows Capital Ltd and others and another matter* [2024] SGCA 14. The Singaporean Court of Appeal explained that a disclosure order made pursuant to s 244 of the Insolvency, Restructuring and Dissolution Act 2018 was an order that was appealable as of right and not one that required leave to appeal.

[123] A core reason for this finding was that s 244 was more appropriately viewed as involving a separate and self-standing question to that being asked under the main proceedings. The court stated:

> 26 Second, if a party falls within any of the categories set out in ss 244(1)(a) to 244(1)(d) of the IRDA, that party may be summoned to appear before the court and be required to produce an affidavit or relevant documents (s 244(1) of the IRDA) and/or be ordered to be examined (s 244(4) of the IRDA). Further, and significantly, on consideration of that party's evidence, the court may order him or her to deliver any property of the company in his or her possession to the judicial manager, Official Receiver, or liquidator, as the case may be (s 244(6) of the IRDA) or make payment of any debt owed by that party to the judicial manager, Official Receiver, or liquidator, as the case may be (s 244(7) of the IRDA). It is therefore apparent that one of the purposes of an order under s 244(1) of the IRDA is to obtain information to enable recovery of assets or debts owed to the company for the purpose of an ongoing insolvency. But it would be incorrect, in our judgment, to view the ongoing insolvency as a parent action, in the context of which the application to examine the relevant person is then seen as an interlocutory matter. The ongoing insolvency action concerns other parties and the realisation and distribution of the assets of the company. *As against this, the application to obtain information from other parties, as far the applicant and those parties are concerned, involves a separate and selfstanding question of whether those parties can be compelled to provide the information or documents that the applicant is seeking. It is evident that it is more appropriate, in this light, to analogise an order under s 244 of the IRDA with an order for leave to serve pre-action discovery or interrogatories.* (Emphasis added.)

[124] Therefore, applications that implicate the freestanding rights of parties separate but connected to the suit, or in other words, those applications that are self-standing, are appealable as of right.

[125] This is in some sense similar, albeit not identical, to the collateral order doctrine in the USA which essentially authorises immediate appeal of 'a small class of rulings, not concluding the litigation, but conclusively resolving claims of right separable from, and collateral to, the rights asserted in the action' (*Will v Hallock* 546 US 345, 349 (2006)). This doctrine was drawn to our attention by the learned Attorney-General in order to reiterate the point that s 68(1)(f) of the CJA cannot be read literally, as there may be instances where a ruling from the court which resolves the claim conclusively and which therefore fall within the purview of a disposal of the parties' rights finally. Such orders would be appealable.

[126] A further example of a preliminary ruling that finally disposes of the parties' rights is where state immunity comes into play; this was the exact matter at issue in *LFL*. What is relevant for our purposes is that one of the prayers in the suit requiring a Minister to appear in the courts in this jurisdiction was struck out for encroaching on state immunity (see *LFL* at

A para [60]). This was purely a question of public international law.

[127] In *Sundra Rajoo*, this court explained that the right to state immunity must be dealt with as a preliminary issue. Otherwise, the function of state immunity would be violated by subjecting the supposedly immune party to the trial process and the corresponding obligations of litigation such as discovery; processes and obligations that it is the very purpose of immunity to avoid. See *LFL* at para [34]:

> [34] It is therefore clear that the question of whether state immunity is applicable to the present proceedings must be determined as a preliminary issue and not later.

[128] The court in *Sundra Rajoo* held at para [77]:

> [77] In any event, we did not think that it is sound judicial policy to suggest that functional immunity can be determined at trial or be treated as a 'statutory defence' because doing so would be to defeat the very purpose of immunity. *The trial process and interlocutory processes such as discovery (in civil cases) have the effect of sidestepping the inviolability of archives and documents and hence defeat the purposes of immunity or in this appeal, the very legislative intent of Act 485*. In our considered view, this is a complete answer to the otherwise legally unsustainable suggestion that the appellant's immunity can and ought to be determined at trial in the criminal court or that his immunity ought to be treated as a 'statutory defence'. (Emphasis added.)

[129] The point for our purposes is that the right not to be tried would be finally disposed of if the dismissal of a striking out application, where state immunity is implicated, were non-appealable. Therefore, where there is a right not to be tried and this right is finally disposed of because of a dismissal of a striking out application, it is an appealable 'decision' under s 3 of the CJA. Nevertheless, this logic is not confined to instances where state immunity is implicated.

[130] Indeed, while this will be demonstrated in greater detail later, this illustrates the pitfalls of a literal interpretation of s 68(1)(f) of the CJA. If s 68(1)(f) of the CJA were to be read literally, this would mean that a matter involving the availability of state immunity could not be the subject matter of appeal. As stated at the outset, this would result in an encroachment of state immunity by reason of a trial of the matter and any conclusion that state immunity had been breached or not complied with would be rendered nugatory. This would cause serious prejudice at an international level.

[131] It is not therefore tenable to construe s 68(1)(f) of the CJA as being applicable in toto to all dismissals of striking out applications. This construction would result in a party being unable to appeal a ruling which finally disposed of its rights; a proposition that cannot be right.

[132] To briefly recapitulate the test as expressed above, there is a final disposal of rights where either:

(a) the rights of the parties under the main suit are finally disposed of; or

(b) where the rights of the parties that are ancillary or separate from the parties' substantive rights under the suit, but also crucial to the parties are disposed of; and

(c) where in both instances, the indicia of the final disposal of the parties' rights is measured by an irreparable, irreversible or irrevocable loss or prejudice, which may not be easily compensated.

Are the dismissal of striking out applications generally appealable?

[133] There is generally no final disposal of the parties' substantive rights where a striking out application is dismissed and the matter is set down for trial for oral evidence to be adduced. All that the court is doing is deferring the adjudication of the parties' substantive rights under the suit, until such oral evidence is adduced and considered such that the court can arrive at a decision which finally disposes of rights of parties.

[134] There is simply a deferral of the 'decision' to a later date. The dismissal of such an application is not a 'decision' as envisaged in s 3 of the CJA. Put another way, the court is exercising its inherent and statutory discretion to decide the matter fully at a later date after hearing oral evidence; the court is deferring the adjudication of the parties' rights and not deciding upon it.

[135] There is also no freestanding right to appeal a decision on the dismissal of a striking out. When a judge says that the court will adjudicate on the rights of the parties at a later date, there is no substantive right being taken away. What is taken away is the right to have the matter struck out preliminarily, instead of a full hearing, but this does not finally dispose of the parties' rights, and is therefore not normally envisaged under s 3 of the CJA as being a right giving rise to an appealable 'decision'.

[136] The amendment has simply clarified what has always been the correct reading of the law, namely that a dismissal of a summary judgment or a striking out application is not appealable because it merely defers the decision envisaged in s 3 of the CJA.

[137] It is here that the appellant's submission that Parliament does not legislate in vain is answered. The effect of the amendment is to clarify the position in law due to the practical, not the legal, uncertainty of the position. In other words, the amendments were not strictly necessary for dismissal of striking out applications to be non-appealable, but due to the fact that litigants

were, nevertheless attempting to appeal such rulings, notwithstanding that their rights which remained intact would be adjudicated upon at a later date. In other words, by amending the CJA to make things clearer, Parliament was not legislating in vain.

[138] The fact that the courts have entertained these appeals prior to the amendment in s 68(1)(f) of the CJA does not mean that the right of appeal existed or was entrenched, for the reasons above; therefore, the amendment in fact does not remove accrued rights, and certainly not any vested right of appeal.

[139] Read purposively to reduce delays, and in light of the fact that the deferral of a decision does not dispose of any substantive rights, nor usually prejudice the parties in any material manner, ss 3 and 67 of the CJA should be read as not granting a right to appeal the deferral of a judgment or order which does not finally dispose of the rights of the parties. This follows from a purposive and contextual construction of the statute. Indeed, it should be recalled that s 3 of the CJA is a section on general interpretation and must be read in 'the context [it] requires' (see s 3 of the CJA). This means that s 3 is to be read in the context of the provisions of the CJA as a whole.

'In the course of'

[140] The appellants and the Bar suggest otherwise. They submit that a correct reading of s 3 of the CJA militates against the purported general principle that the dismissal of striking out applications, which do not or may not dispose of the rights of the parties, is always not appealable. They explain that the decision on a striking out application, and indeed decisions on interlocutory applications more generally, occur at the end of the hearing and not 'in the course of'. Therefore, decisions on striking out applications do not fall within the ambit of 'ruling' as defined by the CJA and are therefore appealable.

[141] For clarity, the appellants and the Bar premise their larger submissions on the assumption that there is a distinction between the law prior to and post the amendment of s 68(1)(f) of the CJA. We will address the effect of s 68(1)(f) of the CJA in greater detail later. What is pertinent for present purposes is that we reject the submission that, premised upon s 3 of the CJA, striking out applications are generally appealable. This construction does not appear to align with the purpose and object of the Act, as if striking out applications are all appealable the practical result would be that a litigant may file one or more striking out applications serially and each one would be appealable to the highest level of the court hierarchy, resulting in an indeterminate, lengthy and costly delay of the full hearing of the matter. That runs awry from the need to

expedite the disposal of matters as espoused by the Act. A

[142] In order to determine how the 'in the course of' requirement functions, it is necessary to consider what s 3 of the CJA means in reference to the other definitions in the Act. B

[143] The term 'cause' is defined as including 'any action, suit or other original proceeding between a plaintiff and defendant, and any criminal proceeding'. 'Matter' is defined as 'every proceeding which is not a cause'. Put simply, the phrase 'cause or matter' encompasses any 'proceeding' in court. C

[144] 'Proceeding' is defined as 'any proceeding whatsoever of a civil or criminal nature and includes any application at any stage of a proceeding'.

[145] Substituted into the definition of 'decision', the definition of 'decision' as set out in s 3 of the CJA is as follows: 'judgment, sentence or order, but does not include any ruling made in the course of any hearing of [any application at any stage of a proceeding] which does not finally dispose of the rights of the parties'. D E

[146] The submission of the appellants and indeed the Bar is to interpret 'in the course of' as simply meaning during the hearing of an application or the full hearing/trial. In other words, the dismissal of a striking out application occurs at the end of the hearing of the application and not 'in the course of' it. F

[147] There is an attractive simplicity to interpreting 'in the course of' as simply meaning during. However, even if a purely literal interpretation were appropriate, which it is not, the 'course of' an activity does not necessarily exclude the activity's conclusion. G

[148] Take for instance the sentence: In the course of the game, the players scored and then shook hands. The end of the game, in particular the shaking of hands, is legitimately phrased as being 'in the course of' the game. The delivery of a decision on a striking out occurs before the hearing can be said to come to an end. The hearing only ends after the court has handed down its decision. Not before. The decision is therefore before the hearing can be said to have ended. H

[149] As such the end of the hearing, and in the present context, the court's dismissal of the striking out application, in a similar fashion occurs 'in the course of' the hearing. I

[150] To be clear, this is not to say that this is how one should interpret

statutes. Indeed, a literal and grammarian parsing of words is an untenable mode of statutory interpretation. This exercise simply seeks to provide insight into why even on a purely literal approach, which is never appropriate, the interpretation of words is not as clear as the parties suggest.

[151] The question then is: how should 'in the course of' be interpreted in this specific context, namely the dismissal of the striking out applications. The starting point is to recognise that all the definitions in s 3 of the CJA are said to be applicable 'unless the context otherwise requires'. Indeed, this is not something that the Act needs to tell us. All Acts should be construed contextually and not *in vacuo*.

[152] The modern approach to statutory interpretation requires that context is present at the forefront of the mind of the interpreter and that it is considered at the outset. The High Court of Australia held in the case of *CIC Insurance Ltd v Bankstown Football Club Ltd* (1997) 187 CLR 384):

> [T]he modern approach to statutory interpretation (a) insists that the context be considered in the first instance, not merely at some later stage when ambiguity might be thought to arise, and (b) uses 'context' in its widest sense to include such things as the existing state of the law and the mischief which, by legitimate means such as those just mentioned, one may discern the statute was intended to remedy.

[153] The UK Supreme Court held in the case of *Regina (Project for the Registration of Children as British Citizens) v Secretary of State for the Home Department; Regina (O) v Secretary of State for the Home Department* [2022] UKSC 3 para [29]:

> 29 ... Words and passages in a statute derive their meaning from their context. A phrase or passage must be read in the context of the section as a whole and in the wider context of a relevant group of sections. Other provisions in a statute and the statute as a whole may provide the relevant context. They are the words which Parliament has chosen to enact as an expression of the purpose of the legislation and are therefore the primary source by which meaning is ascertained.

[154] Indeed, this salutary principle of statutory interpretation has routinely been applied by the Malaysian courts. Augustine Paul FCJ stated in the case of *All Malayan Estates Staff Union v Rajasegaran & Ors* [2006] 6 MLJ 97:

> The exact colour and shape of the meaning of any word in a statute is not to be ascertained by reading them in isolation but in the context of the other enacting parts of the statute (see *Western Coalfields Ltd v Chaturi Singh* 1980 MPLJ 60 (DB)). It has been held that *words must be read structurally and in their context for their significance may vary with their contextual setting* (see *The Nadiad Borough Municipality v The Nadiad Electric Co Ltd* AIR 1964 GUJ 30). (Emphasis added.)

[155] It is also significant that th is principle of contextual interpretation was adopted by this court in *Asia Pacific* in construing the definition of 'decision' under s 3 of the CJA (see *Asia Pacific* at para [118]). Therefore, the definition of 'decision' and by extension the definition of 'in the course of' should be understood in the specific context of a dismissal of a striking out application.

[156] *Context in the present case requires interpreting s 3 of the CJA as meaning what is relevant is the ruling being 'in the course of the full case and not 'in the course of' the striking out application*.

[157] This contextual interpretation is required because what the court is dealing with at striking out is identical to what it deals with at the full appeal. It uniquely, alongside summary judgments and default judgments, deals specifically with the parties' rights in relation to the full case; it does not deal with ancillary rights relating to discovery or interim protection of property. Therefore, when the court dismisses a striking out application, all it does is defer the making of a decision — there is no 'decision' that is made.

[158] Put another way, the court is exercising its inherent and statutory discretion to decide the matter fully at a later date after hearing oral evidence; the court is deferring the adjudication of the parties' rights and not deciding upon it.

[159] While a fuller consideration of what constitutes a right of a party in litigation and how it is affected will be considered subsequently, it is noteworthy at this juncture to recall that the inability to appeal the dismissal of a striking out does not prejudice the applicant in most cases. If there are persuasive reasons why the case should be struck out, it follows that these are reasons that can be raised by the applicant at trial as to why their striking out of the case should be allowed.

[160] This also accords with the purpose of the statute to reduce delays. The purpose of s 3 of the CJA is to prevent appeals mid-stream to interrupt the flow of a trial or hearing. Where a striking out application is dismissed, the stream of the litigation is uninterrupted; the full matter flows on as a matter of course. To allow a party to appeal this decision would be to interrupt the proper disposal of the full case, or rather the 'course of' the full case, and impede its proper disposal.

[161] This is akin to a trial judge's disallowing of an amendment application mid-trial which is obviously 'in the course of' the trial and which interrupts the proper disposal of the case such that it is non-appealable.

[162] It would cause an exorbitant amount of delay to allow parties to appeal

A the dismissal of a striking out where a first-instance judge has already made the often reliable determination, upon examination of the facts, that a claim should be heard in full. While it is of course true there remains a possibility that the trial judge's assessment was incorrect, the statutory scheme and s 3 of the CJA more specifically deliberately prioritises efficient case progression over
B piecemeal challenges to rulings where the parties are not greatly prejudiced.

[163] Therefore, the dismissal of a striking out application which is 'in the course of' the full hearing of the cause or matter, and does not finally dispose of
C the parties' rights, constitutes an unappealable 'ruling' under s 3 of the CJA.

Exceptions

[164] This is how the dismissal of striking out applications are generally
D treated, namely that they are usually non-appealable. As explained above, the reason for this is because there is a deferral of the adjudication of the parties' rights; there is no adjudication on those rights.

[165] However, this is not always the case. There will be situations where the
E dismissal of a striking out will cause grave prejudice to the parties' rights, such that there is an ability to appeal. This is most apparent where the court does not have jurisdiction to hear the matter due to the non-fulfilment by the plaintiff of certain threshold conditions.

F **[166]** This is evident for instance where the threshold requirements for a derivative action are not met and the court nonetheless does not strike it out, determining that a full hearing of the dispute on the merits is necessary. If an appeal against the dismissal of such a striking out application is not allowed
G premised on a literal reading of s 68(1)(f) of the CJA, then this in turn would result in a trial which in no way assists the court in adjudicating upon the threshold requirements or merits of the derivative action. The oral evidence would not assist in determining whether the preliminary point of the threshold requirement for bringing a derivative action has been met. In such an instance,
H the hearing would prolong rather than expedite the disposal of the matter.

[167] But most importantly a reading of s 68(1)(f) of the CJA in that fashion would run contrary to ss 3 and 67 of the CJA. This is because the rights of the parties would have been finally disposed of on an adjudication of the
I preliminary point. Therefore, the right of appeal would have accrued at the point when the court determined the preliminary point of law relating to whether the threshold for a derivative action had been met. This means in practice that the right of appeal would have accrued on the dismissal of the striking out application.

[168] It should also be noted that if more evidence is needed to determine whether the threshold requirements are fulfilled, this would not necessarily give rise to a right of appeal. This occurs for example where the threshold condition is in some way inextricably bound up with the substantive merits of the claim. In such an event, it cannot be said that the parties' rights have been finally disposed of because the trial process is necessary to make that determination.

[169] The foregoing exceptions are to be contrasted with striking out applications which are dismissed due to a need for further evidence. If a striking out is dismissed because there are matters that can only be resolved by way of viva voce evidence, there is no right of appeal. Even if the claim may eventually fail, it is not unmaintainable so as to give rise to a right not to be tried.

The position in law post the amendment of s 68 of the CJA

[170] To reiterate, s 68(1)(f) of the CJA does not alter the position in law in ss 3 and 67 of the CJA; therefore, even with the insertion of s 68(1)(f) of the CJA, there remain cases where the dismissal of striking out applications remain appealable.

[171] This must mean reading s 3 of the CJA, s 67 of the CJA and s 68 of the CJA harmoniously. As canvassed earlier, if a decision finally disposes of the parties' rights, it will constitute an appealable 'decision' under s 3 such that it falls within the Court of Appeal's jurisdiction as conferred by s 67 of the CJA.

[172] The Attorney-General, appearing as amicus curiae, submitted that reading s 68(1)(f) of the CJA as providing a blanket prohibition against appealing the dismissal of a striking out of a pleading or writ cannot be right. To use the words of the Attorney-General in their written submissions, 'The exclusion of an immediate right to appeal in s 68 of the CJA (1)(e) to (g) of Act 91 should not be treated as being carved in stone'.

[173] We agree with the Attorney-General. First and foremost, s 68(1)(f) of the CJA read contextually with s 3 clearly indicates that it cannot have been intended that matters which finally dispose of a party's rights are made non-appealable under s 68 of the CJA. This would render s 3 inoperative and would violate the principle of harmonious interpretation.

[174] Further, it appears to us an absurd result that there will be cases that finally dispose of a party's rights, and irreparably prejudice them, which are non-appealable. Indeed, this is a now well-accepted canon of construction. See *Orchard Circle Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat & Ors* [2021] 1 MLJ 180, para [54]:

> [54] Therefore, distilling from principles as laid out in the aforesaid cases, in construing the true purpose and object of the underlying statute by the Legislature, *it is the function of the court to adopt an approach which produces a result that is fair, just and not bordering on absurdity*. The approach is one that promotes the purpose and object of the statute concerned, albeit that such purpose or object is not expressly set out therein (refer to the Federal Court cases of *Palm Oil Research and Development Board Malaysia & Anor v Premium Vegetable Oils Sdn Bhd & another appeal* [2005] 3 MLJ 97 at p 130 para [79]; *DYTM Tengku Idris Shah Ibni Sultan Salahuddin Abdul Aziz Shah v Dikim Holdings Sdn Bhd & Anor* [2002] 2 MLJ 11 at p 26E; *United Hokkien Cemetries, Penang v The Board, Majlis Perbandaran Pulau Pinang* [1979] 2 MLJ 121 at 123 C-E).

See also the judgment of the Privy Council in *Eco-Sud and others v Minister of Environment, Solid Waste and Climate Change and another (Mauritius)* [2024] UKPC 19:

> In addition, courts should seek to avoid a construction that produces an absurd result, since this is unlikely to have been intended by the Legislature. In that respect absurdity is given a very wide meaning, covering, amongst other things, unworkability, impracticality, inconvenience, anomaly or illogicality: see *R v McCool and another case* [2018] UKSC 23; [2018] NI 181; [2018] 1 WLR 2431, paras 23 and 24.

[175] It follows therefore that s 68(1)(f) of the CJA cannot reasonably apply in full to every dismissal of a striking out application. Adopting such an interpretation would deny a party the right to appeal, even where the ruling conclusively determines its rights — an outcome that is plainly untenable.

[176] Indeed, the abject prejudice the parties will suffer, by way of unnecessary time and expense, if not permitted to appeal such a decision and therefore the prejudice such a literal reading of the statute will engender is again an indicia of the final disposition of the parties' rights.

THE PRESENT APPEALS

Do the parties in the present case possess a right to appeal the dismissal of their striking out applications?

[177] Applying the legal test as set out in the preceding paragraphs, we find that both appellants possess a right to appeal on the particular facts of their respective cases.

MT Ventures

[178] There was a fire that broke out in the premises owned by the first defendant. This allegedly caused damage to the adjacent premises where the

plaintiff ran its business but which a non-party by the name of Pan owned.

[179] The essential basis of the defendants' striking out application is a challenge to the locus standi of the plaintiff. They argue that the damage suffered is to Pan and therefore the plaintiffs do not possess the right to sue.

[180] The plaintiffs counter that they have been assigned the right to sue by way of an absolute assignment premised upon s 4(3) of the Civil Law Act 1956. The defendants allege that this absolute assignment is invalid.

[181] At face value therefore, this is a question of whether the plaintiff fulfils the threshold requirement of locus standi. This is, as stated, a threshold requirement that the plaintiff must fulfil in order for the suit to be brought.

[182] As explained by the Court of Appeal in *Bumiputra-Commerce Bank Bhd v Augusto Pompeo Romei & Anor* [2014] 3 MLJ 672, and indeed as relied on by the appellants before the High Court, a court will not have jurisdiction to determine the issue where a party does not have locus standi. The court held at para [25]:

> Where a party does not have the locus standi to bring an action, the court will not have the jurisdiction to determine the issue ...

[183] See also the case of *Eu Finance Bhd v Lim Yoke Foo* [1982] 2 MLJ 37; [1982] CLJU 21 where the court held:

> Where a decision is null by reason of want of jurisdiction, it cannot be cured in any appellate proceedings; failure to take advantage of this somewhat futile remedy does not affect the nullity inherent in the challenged decision. The party affected by the decision may appeal 'but he is not bound to (do so), because he is at liberty to treat the act as void.

[184] To be clear, it could very well be that the Court of Appeal, in examining the striking out application, may conclude that the objection to locus is not valid or that a full trial is needed to rule on the locus issue in full. The question of whether the appeal of the dismissal of the striking out application will be successful is distinct from whether the applicant has a right to appeal to begin with.

[185] In other words, the objection the appellants make is jurisdictional and therefore they have a right to appeal the dismissal of the striking out application. This in no way means the jurisdictional objection will be successful such that the appellants will prevail in their striking out application.

A Azinal

[186] The essential dispute centres around whether the claim by the respondents are barred by res judicata. In particular, the appellant argues that the respondents are bound by an earlier Federal Court decision which they B suggest covers the same ground such that the present suit should be struck out.

[187] The respondents counter that they have adopted the findings of fact and law by the Federal Court in the earlier suit.

C

[188] This may be so. Nevertheless, the issue raised by the appellant is a true jurisdictional objection; if the matter is indeed res judicata, the defendants have a right not to be tried. Therefore, the dismissal of the striking out application in the present case finally disposes of their right not to be subjected to D duplicative litigation.

[189] As Ariff JCA explained in *Tanalachimy a/p Thoraisamy & Ors v Jayapalasingam a/l Kandiah & Ors (sued as liquidators of the Great Alonioners Trading Corp Bhd) and another appeal* [2014] 4 MLJ 85, to allow a claim that E is res judicata to be relitigated would constitute an abuse of the court's process:

> [35] As regards res judicata and issue estoppel, where they clearly apply on the facts, a subsequent action filed can be struck out as being scandalous or an abuse of court process. Counsel for the first respondent cites, inter alia, the House of Lords F decision in *Hunter v Chief Constable of West Midlands and another* [1981] 3 All ER 727 as authority. Lord Diplock in that case, citing Lord Halsbury in *Reichel v Magrath* (1889) 14 App Cas 665, held the view that 'it would be a scandal to the administration of justice' to allow a matter to be re-litigated. Acknowledging that a court should be slow to strike out a statement of claim, yet when 'identical questions' are sought to be raised, it ought to do so.

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[190] It is evident, therefore, that such an abuse of the court's process, if indeed one exists, should not be permitted to proceed to trial. The doctrine of res judicata is rooted not only in the avoidance of conflicting judicial decisions on the same facts but also in the unjust burden of relitigating identical issues, H which needlessly consumes the court's time and resources (see *Asia Commercial Finance (M) Bhd v Kawal Teliti Sdn Bhd* [1995] 3 MLJ 189), as well as those of the opposing party (see *Carl-Zeiss-Stiftung v Rayner and Keeler Ltd and Others (No 2)* [1966] 2 All ER 536). This very concern underpins a party's I right not to be subjected to duplicative litigation.

[191] In *Asia Commercial Finance*, the court held:

> We are of the opinion that the aforesaid contrary view is to be preferred; it represents for one thing, a correct even though broader approach to the scope of issue estoppel.

> It is warranted by the weight of authorities to be illustrated later. It is completely in accord or resonant with the rationales behind the doctrine of res judicata, in other words, with the doctrine of *estoppel per rem judicatum*. It is particularly important to bear in mind the question of the public policy that there should be finality in litigation in conjunction with the exploding population; the increasing sophistication of the populace with the law and with the expanding resources of the courts being found always one step behind the resulting increase in litigation.

[192] The court in *Carl-Zeiss-Stiftung v Rayner and Keeler Ltd and Others (No 2)* [1966] 2 All ER 536 held:

> The broader principle of res judicata is founded on the twin principles so frequently expressed in Latin that they should be at an end to litigation and justice demands that the same party shall not be harassed twice for the same cause.

[193] Therefore, the defendant's right not to be subject to duplicative litigation would be finally disposed of in the dismissal of the present striking out such that they are permitted to appeal.

[194] Indeed, for the reasons canvassed earlier, namely that the position in law pre-amendment is the same as the law post amendment, the question of s 68 of the CJA removing the right of the parties to appeal does not arise.

Alternative approach to resolution of these appeals

[195] Apart from our foregoing conclusion, we examine in this section the parties' initial submissions and adjudicate on the same, by way of an alternative answer to our conclusion above.

Section 68 of the CJA(1)(f) should not be read so as to enable the removal of substantive rights under ss 67 and 3

[196] The right to appeal is a substantive right. The number of times parties can appeal has a direct and substantive effect on a party's rights under the full suit. In *Sia Cheng Soon & Anor v Tengku Ismail bin Tengku Ibrahim* [2008] 3 MLJ 753 the court held:

> [37] I do not read r 137 as meaning to provide another avenue to bring a case originating in the subordinate court to the Federal Court. On an important matter as right of appeal those sections being provisions passed by Parliament, cannot now be read as being subject to a procedural r 137 made by the rules committee. *A right of appeal is a substantive right, not a procedural right* (see *Colonial Sugar Refining Ltd v Irving* [1906] AC 360 Privy Council). (Emphasis added.)

[197] The point the Court of Appeal in *Azinal* appears to make is there is a distinction between a broad right to appeal the full merits of the suit and an

interlocutory right of appeal. The former to the Court of Appeal is more worthy of protection than the latter.

[198] Nevertheless, it appears that the Court of Appeal too regards the interlocutory right to appeal as a substantive right (see the Court of Appeal judgment in *Azinal* at para [18]). This is correct. An interlocutory right to appeal, where it affects the rights of parties in the manner described above, is indeed a substantive right and should not easily be taken away.

[199] As explained in the preceding sections, an interlocutory application and the rights it seeks to protect can be very important to the parties, whether in its potential prejudice to the parties' protection of their substantive rights under the full suit, or in its prejudice to the separate rights of parties.

[200] Considering then that the right to appeal is substantive, it is trite that statutes are construed, where they take away the substantive rights of parties, as applying prospectively unless the contrary is made clear expressly or by necessary implication. The court held in *Tenaga Nasional Bhd v Kamarstone Sdn Bhd* [2014] 2 MLJ 749, paras [5]–[7]:

> [5] Before us, learned counsel for the appellant submitted that both leave questions should be answered in the negative. Learned counsel for the respondent agreed that reg 11(2), post amendment, had no retrospective effect. It would seem that both parties knew what should be the answer to the first leave question, which should free us to proceed to the next leave question. *Still, we could take this opportunity to uphold that it is indeed a rule of construction that a statute should not be interpreted retrospectively to impair an existing right or obligation, unless such a result is unavoidable by reason of the language used in the statute* (*Yew Bon Tew & Anor v Kenderaan Bas Mara* [1983] 1 MLJ 1 *per Lord Brightman, delivering the advice of the Board).*
>
> ...
>
> [7] *If it takes away a substantive right, the amendment will not have retrospective effect, save by clear and express words. If it is procedural, retrospectivity applies unless otherwise stated in the statute concerned* (*MGG Pillai v Tan Sri Dato' Vincent Tan Chee Yioun* [2002] 2 MLJ 673 *per Steve Shim CJ (Sabah & Sarawak)*. If the Legislature intends an amendment to have retrospective application, it must expressly and clearly say so (see *Puncakdana Sdn Bhd v Tribunal for Housebuyers Claims and another application* [2003] 4 MLJ 9 per Md Raus J, as he then was). But retrospective effect was not manifested in the language of the amendment. Hence, the amendment to reg 11(2) must be constructed as a prospective provision without any retrospective application. (Emphasis added.)

[201] The court also held in *Jack-In Pile (M) Sdn Bhd v Bauer (M) Sdn Bhd and another appeal* [2020] 1 MLJ 174, paras [60]- [61]:

> [60] Accordingly, once a party has acted on its contractual rights at a time when

such contractual provisions were permissible, the presumption against retrospection is strong. In the case of *Mithilesh Kumari & Anor v Prem Behari Khare* 1989 AIR 1247 the Indian Supreme Court was of the following view:

> We read in Maxwell that it is a fundamental rule of English Law that no statute shall be construed to have retrospective operation unless such a construction appears very clearly at the time of the Act, or arises by necessary and distinct implication. A retrospective operation is, therefore, not to be given to a statute so as to impair existing right or obligation, otherwise than as regards matter of procedure, unless that effect cannot be avoided without doing violence to the language of the enactment. Before applying a statute retrospectively. The court has to be satisfied that the statute is in fact retrospective. *The presumption against retrospective operation is strong in cases in which the statute, if operated retrospectively, would prejudicially affect vested rights or the illegality of the past transactions, or impair contracts, or impose new duty or attach new disability in respect of past transactions or consideration already passed*. (Emphasis added.)

[61] *It is therefore clear that courts will be slow in concluding that a statute would have retrospective effect if such construction will consequently impact vested rights, contracts, transactions or impose new duties and obligations in relation to past transactions for to do so would be contrary to the presumption that a statute should not be given a construction that would impair existing rights as regards person or property unless the language in which it is couched requires such a construction*. The basis of this presumption in this area of the law is no more than simple fairness, and justice which ought to be the basis of every general rule. It should be observed that this is another dimension or a broader presumption in the approach in determining whether legislation has retrospective application. It will be remembered that Lord Scott in *Wilson v First Country* in para [153] succinctly stated that 'there is a common law presumption that a statute is not intended to have retrospective effect. This presumption is part of a broader presumption that Parliament does not intend a statute to have an unfair or unjust effect'. (Emphasis added.)

[202] In the present case, there is no such contrary indication that justifies construing the statute as being retrospective.

[203] The Court of Appeal in *Azinal* reasoned that such a contrary indication can be gleaned from the purpose of the statute. In particular, it reasons that the purpose of the amendment was to clear the large backlog of interlocutory appeals; therefore, this justified a more expansive interpretation of s 68 of the CJA.

[204] While the Court of Appeal should be commended for adopting the purposive approach, there was, with respect, not enough consideration given to the nature of the right in question and the prejudice to the parties, as a result of its reading of the statute.

[205] It is for these reasons, namely:

A (a) the importance of the rights of the parties; and

(b) the prejudice to the relevant parties,

B that forms the basis of the rule of statutory interpretation that legislation should generally not be given retrospective effect so as to take away vested rights.

C **[206]** Indeed, it is precisely considerations of this nature, namely injustice to parties who have accrued rights, which form the basis of the presumption that Parliament does not generally legislate with retrospective effect, per Lord Scott in *Wilson v First County Trust Ltd* [2003] 4 All ER 97 at para [153]:

> D It is, of course, open to Parliament, if it chooses to do so, to enact legislation which alters the mutual rights and obligations of citizens arising out of events which predate the enactment. *But in general Parliament does not choose to do so for the reason that to legislate so as to alter the legal consequences of events that have already taken place is likely to produce unfair or unjust results. Unfairness or injustice may be produced if persons who have acquired rights in consequence of past events are deprived of those rights by subsequent legislation; or it* may be produced if persons are subjected on account E of those past events to liabilities that they were not previously subject to. There is, therefore, a common law presumption that a statute is not intended to have a retrospective effect. This presumption is part of a broader presumption that Parliament does not intend a statute to have an unfair or unjust effect (see Maxwell on *Interpretation of Statutes* (12th Ed, 1969) p 215 and Bennion on *Statutory Interpretation* (4th Ed, 2002) pp 265–266 and 689–690). The presumption can be F rebutted if it sufficiently clearly appears that it was indeed the intention of Parliament to produce the result in question. The presumption is no more than a starting point. (Emphasis added.)

G **[207]** At this juncture, it is apposite to discuss the case of *Lim Phin Khian v Kho Su Ming* [1996] 1 MLJ 1 ('Lim Phin Khian'). This is a case the respondents in particular rely on to demonstrate that the presumption above, that vested rights should not be taken away, can be displaced in the appropriate case.

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[208] In *Lim Phin Kian*, the judgment under appeal was a High Court judgment pronounced on 7 June 1994. Under r 56 of the then existing Rules of the Supreme Court 1980, the appellant had one month from the date of that decision to bring his appeal to the Supreme Court (now Federal Court).

I

[209] On 24 June 1994, the appellant filed and serve his notice of appeal. On this same date, the Courts of Judicature (Amendment) Act 1994 came into force so as to create the Court of Appeal which had jurisdiction to hear appeals from the High Court.

[210] Seizing the opportunity that appeared to have presented itself, the respondent in *Lim Phin Kian* took a preliminary objection that the appeal brought to the Federal Court was incompetent as the appeal should have instead been brought to the Court of Appeal. The Federal Court, in separate judgments written by Edgar Joseph FCJ and Gopal Sri Ram FCJ dismissed this preliminary objection.

[211] While there are slight differences in the reasoning of the two Justices, these differences do not bear on the present appeal.

[212] Both judges agreed that the general principle to be adopted when determining when the right of appeal vests in a party is the *Macnaghten* test as expounded in the case of *Colonial Sugar Refining Co Ltd v Irving* [1906] AC 360. This test has essentially established the proposition that a right of appeal vests in the litigant at the time the original proceedings is instituted and not only when an adverse decision against the putative appellant is made. Therefore, when assessing if a right of appeal has vested, the relevant time is the date of the institution of the original proceedings and not the date of the adverse decision. It is also presumed that any alteration in the law relating to appeals after institution of the original proceedings is presumed not to be retrospective.

[213] Gopal Sri Ram FCJ held in *Lim Phin Kian*:

> The *Macnaghten* test has been read, as I think it should, as establishing the proposition that a right of appeal vests in a litigant at the time of institution of the original proceedings and not merely as a consequence of an adverse decision against the putative appellant. See, *Hoosein Kasam Dada (India) Ltd v State of Madhya Pradesh* AIR 1953 SC 221; *Garikapati v Subbiah Choudhry* AIR 1957 SC 540; *State of Bombay v Supreme General Films Exchange* AIR 1960 SC 980; *Kasibai v Mahadu* AIR 1965 SC 703; *Jose Da Costa v Bascora Narcornim* AIR 1975 SC 1843.
>
> In other words, the point of time at which it is to be determined whether a right of appeal exists is, unless there are reasons to conclude to the contrary, the date on which the original action or other proceeding was instituted, and not the date on which the notice of appeal is filed and served. *Any alteration in the law relating to appeals, whether it is an abolition of the right, or a transfer of the right to another tribunal (in the present case to the Court of Appeal) after institution of original pro ceedings, is presumed not to be retrospective*. (Emphasis added.)

[214] Therefore, to Gopal Sri Ram FCJ, any alteration in the law relating to appeals is presumed not to be retrospective. Such a presumption is derived from the understanding that Parliament does not intend an unjust result.

[215] As Gopal Sri Ram FCJ notes, and we are in agreement with this

proposition, caution should be used when employing a presumption. Considering that the presumption is derived from the understanding that Parliament does not intend an unjust result, situations will occur where it will produce far greater injustice to apply the presumption than to disapply it. What should be evaluated is the statute itself in its own unique context.

[216] The judgment of Lord Mustill in *L'Office Cherifien des Phosphates and another v Yamashita-Shinnihon Steamship Co Ltd; The Boucraa* [1994] 1 All ER 20 as endorsed by Gopal Sri Ram FCJ in *Lim Phin Kian* states as follows:

> Precisely how the single question of fairness will be answered in respect of a particular statute will depend on the interaction of several factors, each of them capable of varying from case to case. *Thus, the degree to which the statute has retrospective effect is not a constant. Nor is the value of the rights which the statute affects, or the extent to which that value is diminished or extinguished by the retrospective effect of the statute*. Again, the unfairness of adversely affecting the rights, and hence the degree of unlikelihood that this is what Parliament intended, will vary from case to case. So also will the clarity of the language used by Parliament, and the light shed on it by consideration of the circumstances in which the legislation was enacted. *All these factors must be weighed together to provide a direct answer to the question whether the consequences of reading the statute with the suggested degree of retrospectivity is so unfair that the words used by Parliament cannot have been intended to mean what they might appear to say*. (Emphasis added.)

[217] The question before the court in *Lim Phin Kian* therefore was whether the *Macnaghten* presumption should be applied such that the right of appeal vested at the time the original proceeding was filed in which case all cases filed pre-24 June 1994 should go to the Federal Court, and not the Court of Appeal.

[218] Gopal Sri Ram FCJ found that the *Macnaghten* presumption was displaced such that the Federal Court only had jurisdiction to hear appeals on High Court judgments made before the 24 June 1994 and not for all suits filed before the 24 June 1994.

[219] The primary reason for this was that the Court of Appeal would have been created but left, as so eloquently put by Gopal Sri Ram FCJ, 'bereft of any business' if such a conclusion was reached. In other words, the Court of Appeal would have to likely wait years before appeals started coming in to it as it would only have jurisdiction to hear appeals of suits filed after the 24 June 1994; it is obvious that this would be a considerable amount of time after it was created, which was on the 24 June 1994. His Lordship stated:

> In my judgment, the correct approach is to look at the substance and general purpose of the legislation in order to discover its objective aim or purpose. And when I do that, I am much moved to the conclusion that Parliament could not have intended those horrendous consequences of which I spoke a moment ago. To hold

> otherwise would mean that Parliament went through the elaborate process of creating the Court of Appeal and endowing it with all the appellate powers and jurisdiction theretofore enjoyed by the Supreme Court, only to leave it bereft of any business. It would mean that Parliament was legislating in vain. With respect, I do not think that it is open for me to reach such a conclusion.

[220] Indeed, even though Edgar Joseph FCJ decided the case with reference to s 17 of the Courts of Judicature (Amendment) Act 1995, His Lordship too was clearly vexed by this concern. His Lordship stated:

> If I were free to decide the preliminary objection on general principle, I would unhesitatingly hold that the principles enunciated in the *Colonial Sugar Refining Co* case would apply — although the effect of doing so would mean that many decisions of the Court of Appeal in appeals arising from suits or proceedings instituted in the court of first instance prior to 24 June 1994, would thereby be nullified, and the Court of Appeal would be bereft of business a while — and, on that ground alone, the preliminary objection would have to be overruled.

[221] The second reason for the Federal Court's conclusion was the manifest injustice it would cause to parties who did not have the clairvoyance of foreseeing their right would be taken away. Again, Gopal Sri Ram FCJ and Edgar Joseph FCJ's conception of how this prejudice arises differed slightly due to the difference in the process of their reasoning but the fundamental point is this: there was grave prejudice to the parties' right to appeal if the *Macnaghten* presumption was applied and if the statute in question was read literally. In particular, they explained that the solicitors for the appellant could not have known, when serving their notice of appeal, that there would be any issues of jurisdiction.

[222] Edgar Joseph FCJ in *Lim Phin Kian* held:

> Be that as it may, when the solicitors for the appellant filed and *served their notice of appeal on 24 June 1994, and thereby asserted their client's right of appeal, they, not being gifted with prescience, could not possibly have foreseen that some eight months later they would be confronted by the jurisdictional objection hereinbefore mentioned*. In other words, when on 24 June 1994, the solicitors for the appellant brought their appeal to the Federal Court, they had not the slightest reason to suppose that their appeal had to lie to the Court of Appeal, for the very good reason that on that date, the provisions of s 17 of the Amending Act of 1995 were unknown to the law and so they had no option but to rely on the general principles of the common law, reinforced by s 30(1)(d) and (e) of the Interpretation Act, as illustrated by the *Colonial Sugar Refining C*o case, and to file their appeal to the Federal Court.
>
> In these circumstances, *to uphold the preliminary objection would lead to a manifest injustice* and would serve no purpose, so that, if at all possible, this court should be astute to avoid such a result unless, of course, this is what the Amending Act of 1995 plainly requires, in which case, the function of the court is to give effect to the will of Parliament as expressed in the law. (Emphasis added.)

[223] Gopal Sri Ram FCJ likewise stated in *Lim Phin Kian*:

> Were I to subscribe to the suggested interpretation, it would lead to an unjust result. Take this very case. The present appellant, when he filed his notice of appeal, having no advantage of clairvoyance, could not have foreseen that Parliament would, in February 1995, pass legislation that would, when read literally, deprive him of his right of appeal. To read s 17 as retrospectively depriving the appellant of a substantive right would result in a manifest injustice. In my judgment, the injustice that would be occasioned by adopting the suggested interpretation is, in itself, a sufficient reason for me to reject it.

[224] Coming to the present case, it is of great importance to note that the consequence of holding that the *Macnaghten* presumption does not apply is not nearly as deleterious as it was in *Lim Phin Kian*'s case. It can be argued that the clearing of the backlog of cases will take more time as the Court of Appeal will have to hear more striking out appeals; this however pales in comparison to the consequences that Gopal Sri Ram FCJ referred to of the Court of Appeal being bereft of business for years. It should also be borne in mind that there remains the possibility of the unjust consequences of parties whose rights have been finally disposed, being deprived of their vested rights of appeal.

[225] Moreover, striking out applications are typically decided shortly after the suit is initiated. This temporal proximity means that the number of cases where the suit was filed before 1 October 2022, but where the striking out decision was rendered after that date, will be limited. Thus, the anticipated increase in appeals is not likely to be considerable. In such circumstances, the balance should tilt in favour of preserving the parties' substantive rights, particularly where the amendment does not explicitly extinguish such rights.

[226] Therefore, s 68 of the CJA should *not* be read as displacing the *Macnaghten* presumption or as operating retrospectively to take away the vested right of appeal that both parties possessed in the present case. In other words, even if one reads s 68(1)(f) of the CJA literally so as to remove the parties' rights to appeal the dismissal of a striking out application, this cannot apply so as to remove the vested rights of the parties. Therefore, even under this alternative ground, the appellants possess a right to appeal the dismissal of their striking out applications.

CONCLUSION

[227] Therefore, while the dismissal of striking out applications are generally not appealable, the parties possess a right to appeal on the particular facts of their respective cases.

[228] The substantive right of both these appellants to appeal the dismissal

of their striking out applications were indeed vested in them at the time they filed their respective suits. This substantive right was not taken away by s 68(1)(f) of the CJA; indeed, s 68(1)(f) of the CJA does not alter the position of law in relation to this substantive right.

[229] We reiterate again that the correct position in law is, as expressed in our primary mode of resol ving these appeals, that s 68(1)(f) of the CJA only bars appeals where there is no final disposal of the rights of parties. This is normally the case where the court of first instance determines that further oral evidence needs to be adduced in order that it can arrive at a decision which finally disposes of the parties' rights. This was the position in law even pre-s 68(1)(f) of the CJA on a proper appreciation of s 3 of the CJA. In other words, s 68(1)(f) of the CJA clarifies the law but does not change it. The instant appeals however did not turn on a need to hear further oral evidence but on preliminary points of law. As such the dismissal of the striking out applications resulted in a final disposal of the appellants' rights, as envisaged under ss 3 and 67 of the CJA. Therefore, s 68(1)(f) of the CJA did not preclude an appeal to the Court of Appeal from those first instance decisions.

[230] We therefore order that both appeals be reinstated and heard in full before the Court of Appeal.

[231] Considering the above reasoning, we see no need to answer the leave questions posed by the parties.

Court ordered that both appeals be reinstated and heard in full before Court of Appeal.

Reported by Dzulqarnain Ab Fatar